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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 110

ALBERTO COSTANZO, PETITIONER,

vs.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED MAY 28, 1932.

CERTIORARI GRANTED OCTOBER 10, 1932.

(36,807)

(36,807)

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 4548, Civil Docket

In re ALBERTO COSTANZO, Petitioner for Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS—Filed July 8, 1931

Your petitioner, Alberto Costanzo, of the State of Rhode Island, complaining, shows:

That he is unlawfully detained and held by one Anna C. Tillinghast, United States Commissioner of Immigration at Boston, in the State of Massachusetts.

Your petitioner further shows that he has been ordered deported under Section 19, Chapter 29 of an Act of Congress passed February 5, 1917.

[fol. 2] That your petitioner is thirty years of age, came to the United States from Italy when he was five years of age and has resided continuously in the United States since that time.

That your said petitioner was taken into custody by Inspector Frank E. Batchelder, with the United States Immigration Service, by virtue of said Act of Congress under a warrant issued by W. W. Hubbard, Second Assistant Secretary of Labor, a copy of which is annexed and marked "Exhibit A". Said warrant alleges that the petitioner has been found in the United States in violation of the Immigration Act of February 5, 1917, for the following among other reasons:

"That he has been found managing a house of prostitution, or music, or dance-hall, or other place of amusement or resort, habitually frequented by prostitutes."

Your petitioner further alleges that he was taken into custody by Inspector William M. Clark of the United States Immigration Service by virtue of said warrant, a copy of which is hereto annexed and marked "Exhibit A", and that your petitioner had a hearing on said warrant before said Inspector William M. Clark, at the conclusion of

which the said inspector recommended that your petitioner be deported to Italy.

In accordance with said recommendation, the Commissioner General of Immigration of the United States Department of Labor has ordered your petitioner deported to Italy and by reason thereof your petitioner alleges that your said petitioner was on the eighth day of July, A. D. 1931, taken into custody and is now held in detention by said Anna C. Tillinghast, United States Commissioner of Immigration at Boston, in the Commonwealth of Massachusetts.

Your petitioner avers that on or about the twenty-fifth day of October, 1925, he was indicted in the Superior Court for Washington County, in the State of Rhode Island, on the charge set forth in said warrant, a copy of which is hereto annexed and marked "Exhibit A" and on a plea of nono made by your petitioner to said indictment was sentenced to a term of three years in the Rhode Island State's prison, and that after serving sixteen months and [fol. 3] fourteen days of said sentence he was released on parole by the Board of Parole of the State of Rhode Island.

Your petitioner further avers that he is a laborer by occupation; that he is married and has two children, both of whom were born in the United States, and that since his release from the Rhode Island State's prison he has been living with his wife and children and supporting them.

Your petitioner further avers that he has no relatives or friends or property in Italy and does not speak the Italian language.

Your petitioner further alleges that the order of the Commissioner General of Immigration of the United States Department of Labor ordering the deportation of your petitioner to Italy is in violation of Article VIII of the Articles of Amendment to the Constitution of the United States which provides:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unjust punishments inflicted."

Your petitioner avers that he is just as much a product of the United States as though born in this country. He is unacquainted with the Italian language and customs; has no friends or relatives or property in Italy; he knows no other habits or customs and traditions than ours, and that whatever habits and customs he has acquired are American hab-

its and customs and were acquired in the United States. He was arrested, indicted and sentenced to prison, and served sixteen months and fourteen days in the Rhode Island State's prison and thereby paid the penalty for the offence and paid his debt to society for the violation of one of the laws of the State of Rhode Island.

Your petitioner further alleges that deportation would be to him exile and would be most cruel and unusual punishment; that the law was enacted to rid this country of immigrants who were criminals in their native land and acquired their vices and habits in the land from which they emigrated to the United States and was not adopted for the purpose of deporting our own criminals and wrong-doers.

Wherefore your petitioner prays that a writ of habeas [fol. 4] corpus be issued by this Honorable Court ordering Anna C. Tillinghast, the United States Commissioner of Immigration at Boston, in the Commonwealth of Massachusetts, to appear and show cause why the said Alberto Costanzo should not be released from further custody under said warrant of arrest and deportation.

Your petitioner further prays that pending a hearing on the merits of this petition the said Alberto Costanzo may be permitted to remain in the United States and that he may be released upon such conditions as to this Honorable Court may deem best and proper.

Alberto Costanzo.

Duly sworn to by Alberto Costanzo. Jurat omitted in printing.

Let writ issue. July, 1931.

EXHIBIT A TO PETITION

Warrant—Arrest of Alien

United States of America, Department of Labor, Washington

No. 55487/62

To Commissioner of Immigration, Boston, Mass., or to any immigrant inspector in the service of the United States:

Whereas, from evidence submitted to me it appears that the alien Alberto Costanzo, who landed at the port of New

York, N. Y., on or about the 15th day of June 1905 has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

"That he has been found managing a house of prostitu- [fol. 5] tion, or music, or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes."

I, W. W. Husband, Second Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1926". Pending further proceedings the alien may be released from custody under bond in the sum of $1,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 16th day of March 1926.

—— ——, Second Assistant Secretary of Labor.

Upon the filing of this petition, a summons issues to Anna C. M. Tillinghast, United States Commissioner of Immigration, to appear before said court on Monday, the thirteenth day of July, A. D. 1931, at three o'clock p. m., to show cause, if any she has, why a writ of habeas corpus should not issue for the body of Alberto Costanzo, and the marshal makes a return upon said summons as follows:

IN UNITED STATES DISTRICT COURT

MARSHAL'S RETURN ON SUMMONS

UNITED STATES OF AMERICA,
Massachusetts District, ss:

Boston, July 8, 1931.

Pursuant hereunto, I have this day summoned the within named Anna C. M. Tillinghast to appear before the District Court of the United States, as within directed, by giving to

her in hand at the Immigration Station, East Boston, in said District, a true and attested copy of the within summons.

William J. Keville, United States Marshal. James F. Mahar, Deputy United States Marshal.

On the twenty-seventh day of July, A. D. 1931, said cause is set down for hearing and fully heard by the court, the [fol. 6] Honorable James A. Lowell, District Judge, sitting, and the following Order of Court is entered, dismissing petition and denying writ:

IN UNITED STATES DISTRICT COURT

ORDER DISMISSING PETITION—July 27, 1931

LOWELL, J.:

The above-entitled cause having come on for hearing on the twenty-seventh day of July 1931, it is now, to wit, July 27, 1931, ordered that the petition be dismissed and writ denied; but it being represented to the court that the petitioner intends to take an appeal from this order, it is further ordered that said petitioner enter into a recognizance with sufficient surety in the sum of three thousand dollars ($3,000) for the appearance of said petitioner to answer the judgment of the appellate court.

By the Court.

Mary E. Prendergast, Deputy Clerk.

July 27, 1931.

J. A. L., D. J.

CLAIM OF APPEAL AND ALLOWANCE THEREOF

From the foregoing order of court, Alberto Costanzo claims an appeal to the United States Circuit Court of Appeals for the First Circuit, and gives good and sufficient security that he will prosecute his appeal to effect and answer all costs if he fail to make his plea good, and said appeal is allowed accordingly.

RECORD OF UNITED STATES BOARD OF IMMIGRATION, DEPARTMENT OF LABOR [EXTRACTS]—Filed July 27, 1931

File No. 55487/62, Incl. No. 8404

Washington, July 13, 1931.

I hereby certify that the annexed is the original file constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Alberto Constanzo or Costanzo or Albert Costanzo.

George J. Harris, Assistant Commissioner General of Immigration. (Seal United States Circuit Court of Appeals, First Circuit.)

[fol. 7] Office of the Secretary

I hereby certify that George J. Harris, who signed the foregoing certificate, is now, and was at the time of signing, Assistant Commissioner General of Immigration and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this thirteenth day of July one thousand nine hundred and thirty-one.

Robe Carl White, the Assistant Secretary of Labor. (Seal.)

[MITTIMUS—STATE PRISON]

Copy

STATE OF RHODS ISLAND AND PROVIDENCE PLANTATIONS, Washington, sc.:

SUPERIOR COURT, NOVEMBER SESSION, A. D. 1925

[SEAL.]

To the sheriff of the county of Washington or to his deputies, and to the warden of the State prison in county of Providence, Greeting:

Whereas, by said court, Albert Costanzo, of Providence in the County of Providence, in said State has been this day sentenced for harboring for prostitution as follows, viz:

That he the said Albert Costanzo be imprisoned for and during the term of three years from and after this twenty-ninth day of December, A. D. 1925, in the State prison, in the county of Providence, and there kept at hard labor.

These are, therefore, in the name of said State, to require you, the said sheriff or deputies to take the body of the said Albert Costanzo into your custody, and him deliver to said warden of said prison, with this warrant; and you the said warden, are alike required to receive said Albert Costanzo into your custody, and him safely keep in said State prison until sentence be fully executed and carried into effect, according to the true intent and meaning thereof, and this shall be your sufficient warrant for so doing.

[fol. 8] Hereof fail not, &c.

Witness the Seal of our Superior Court, at South Kingstown, this twenty-ninth day of December, A. D. 1925.

Wm. H. Caswell, Clerk.

Ind. #405

[On back]

CRANSTON, SC:

March 3, 1926, A. D.

I hereby certify that this is a true copy.

Charles E. Linscott, Warden.

PROVIDENCE, SC:

Cranston, Dec. 29th, 1925.

Committed the within named Albert Costanzo to the State prison, in said County, as within commanded.

Fred T. Mitchell, Sheriff.

Fees: Committing, .70; 50 miles, 10.00—$10.70.
33429. S. P. 3987, Page 196. 12/29/25.

Office of Inspector in Charge, Providence, R. I.

Jan. 22, 1926.

526/359, Alberto Costanzo

Investigation Made by Inspector W. M. Clark at Howard, R. I., 1/21/26

The case of the above-named alien was called to my attention by Judge A. A. Capatosto of the Rhode Island Su-

perior Court, who sentenced him to State prison and I went to State prison, Howard, R. I., on January 21, 1926, took the following statement under oath:

My name is Alberto Costanzo, 35 Harper Street, Providence, R. I., age 24, born in Torre, Province of Caserta, Italy, of which country I am a subject; I was married in Providence about ten years ago, I was only a very young boy; my wife's name is Laura and we have two children, Beverly four and Joseph two, both born in Providence and they are living at 12 Tappan Street, Providence, R. I.; I can read and write, mill operative.

Q. 1. When did you come to the United States?

A. About nineteen years ago, do not remember the month or date, or name of the ship.

Q. 2. Who brought you to this country?

[fol. 9] A. My father Francisco, he had died since, and three sisters, Ida, Raffaela and Anina, they are living at 34 Marietta Street, Providence, R. I.

Q. 3. Where did you land in this country?

A. At New York.

Q. 4. Have you ever taken any steps to become a citizen of the United States?

A. No.

Q. 5. Did your father ever take any steps to become a citizen of the United States?

A. No; my father died about four years after he came to this country and he never took out any papers.

Q. 6. When were you arrested?

A. November 1925.

Q. 7. What was the charge against you in court?

A. Harboring for prostitution.

Q. 8. Did you plead guilty or were you convicted?

A. First I pleaded not guilty but my lawyer made me change my plea to nolo.

Q. 9. When were you sentenced?

A. December 29th, 1925 to three years in State's prison.

Q. 10. Have you any relatives in Italy?

A. A brother, Amerigo, in my native town.

Recommend that warrant issue for the arrest of this alien alleging that he is an alien, managing or employed by or in connection with house of prostitution, music or dance

hall, or place of amusement or resort habitually frequented by prostitutes; or where prostitutes gather; or who assist prostitutes or promise to protect from arrest any prostitute.

W. M. Clark, Inspector in Charge.

WMC/f.

APPLICATION FOR WARRANT OF ARREST UNDER SECTION 19 OF THE ACT OF FEBRUARY 5, 1917

United States Department of Labor, Immigration Service, Boston, Mass.

No. 526/359

March 4th, 1926.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Alberto Costanzo, age 24 years, native of Italy, who arrived at New York some time in 1905, date and steamer unknown. The alien named in the attached certificate, upon the following facts which the undersigned has carefully investi- [fol. 10] gated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants. Application for a warrant based on conviction for a crime committed in the United States should be accompanied by a copy of the alien's commitment obtained from the warden of the institution wherein he is confined, or a certificate of conviction obtained from the clerk of the court wherein sentence was pronounced.)

From the enclosed report by Inspector in charge Clark of the Providence office, it is apparent that the abovenamed alien is in the United States in violation of law, in that he has been found managing a house of prostitution, or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes.

Copy of mittimus is attached.

The Commissioner at New York has been unable to verify the alien's arrival.

(1) The present location and occupation of above-named alien are as follows: State prison, Howard, R. I.

Frank S. Abercrombie, Acting Commissioner.

JAD. Enc.

Issue W. for Manager, full charge. O. W. M.

[Stamped on face:] Recd. Bu. of Immigration Mar. 5, 1926, Mails and Files. Mail & Files, March 8, 1926, Out. Received 3, 8, 26. Warrant Division.

[fol. 11] WARRANT—ARREST OF ALIEN

United States of America, Department of Labor, Washington

No. 55487/62

To Commissioner of Immigration, Boston, Mass., or to any immigration inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Alberto Costanzo, who landed at the port of New York, N. Y., on or about the fifteenth day of June, 1905, has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

That he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes.

I, W. W. Husband, Second Assistant Secretary of Labor, by virtue of the power and authority vested in me by the laws of the Uinted States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1926." Pending further proceedings the alien may be released from custody under bond in the sum of $1,000.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this sixteenth day of March, 1926.

W. W. Husband, Second Assistant Secretary of Labor.

BMC. W.

[Stamped on face:] Received Mar. 18, 1926, Immigration Service, Boston.

[fol. 12] U. S. Department of Labor, Immigration Service

File No. 526/359

Report of Hearing in the Case of Costanzo, Alberto, under Department Warrant No. 55487/62, Dated March 16, 1926

Hearing Conducted by Inspector W. M. Clark at Howard, R. I.

Date: 5/6/26.

Alien taken into custody at State prison, Howard, R. I., May 6, 1926 by Inspector W. M. Clark and allowed to remain in State prison. Minutes taken and transcribed by Clark. Said Alberto Costanzo being unable to speak and understand the English language satisfactorily, an interpreter, named Joseph Zelano, competent in the Italian language, was employed and duly sworn.

Said Alberto Costanzo was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was accepted. The alien being first duly sworn, the following evidence was presented:

Q. 11. What is your name and address?

A. Alberto Costanzo, 35 Upper Street, Providence, R. I., where I have my brother Gaetano and his wife.

Q. 12. How old are you?

A. I am twenty-five; do not know the date of my birth.

Q. 13. Where were you born?
A. In Torre, Province of Caserta, Italy.
Q. 14. Have you taken any steps to become a citizen of the United States?
A. I did not have a chance; my father died before he was here for five years; my brother Gaetano is a citizen.

[Warrant read and explained.]

Q. 15. Do you understand this warrant?
A. Yes.
Q. 16. Under the law you have the right to be represented at this hearing by counsel; do you wish to be so represented?
A. Yes, I will have my brother get a lawyer for me.

[fol. 13] Hearing adjourned to give alien an opportunity to secure counsel. Copy of warrant of arrest left with warden of prison.

On June 29, 1927, at the United States Immigration Office, Providence, R. I., hearing started March 16, 1926 was continued.

Present:
Alien Alberto Costanzo.
Attorney James E. Dooley, 15 Westminster Street, Providence, R. I.
Inspector W. M. Clark.
Inspector F. J. McGovern, Secretary.

Alien sworn by Inspector Clark.

Q. 17. Have you changed your address?
A. No; still 35 Upper Street, Providence, R. I., where I live with my brother Gaetano.
Q. 18. Are you married?
A. I was, not now.
Q. 19. What was your wife's name?
A. Laura Germano.
Q. 20. Have you any children?
A. Two.
Q. 21. Both born in the United States?
A. Yes.
Q. 22. How old are the children?

A. One five and one six.

Q. 23. Did Mrs. Costanzo secure the divorce from you?

A. Yes.

Q. 24. When?

A. Last year in September.

Q. 25. Did she receive custody of the children?

A. I do not know what happened.

Q. 26. Where is she living now?

A. In Providence; must be with her father.

Q. 27. You can read and write?

A. I can read, but I cannot write so good.

Q. 28. What is your occupation?

A. Work in a gasoline station for my brother Gaetano at 778 Charles Street, Providence, R. I.

Q. 29. You earn how much?

A. $17 a week.

Q. 30. When did you come to the United States?

A. In 1907; I do not know the month.

Q. 31. Do you know the name of the ship?

A. No.

Q. 32. Who came with you?

A. My father and three sisters; father named Francisco, and sisters, Raffaela, Ida and Anina.

Q. 33. Did they all come with you at the same time and same ship?

A. Yes.

[fol. 14] Q. 34. And you came direct to Providence?

A. We landed in Boston, and took the ship at Naples.

Q. 35. Do you know if it was the White Star line?

A. I was too small.

Q. 36. How old were you?

A. Five years old when I came here.

Q. 37. Have you ever left the United States since that time?

A. No; in Providence all the time.

Q. 38. You went to school here?

A. Left at 5 B; my father died and I had to go to work.

Q. 39. What school did you go to?

A. Grammar school on Branch Avenue.

Q. 40. Is that known as the Branch Avenue grammar school?

A. Yes.

Q. 41. And you went there from primary to grade 5 B and left when your father died; in what year?

A. I do not know.

Q. 42. Do you know how old you were when you left school?

A. About thirteen or fourteen.

Q. 43. Then did you go to work?

A. I had to.

Q. 44. How many times have you been arrested in the United States?

A. Once before this.

Q. 45. When?

A. 1916 or 1917.

Q. 46. What was the charge against you?

A. Stealing a machine, because I was with fellows who were stealing the machine.

Q. 47. Were you tried?

A. Yes; found guilty.

Q. 48. Did you receive a sentence?

A. Six months in Providence County jail.

Q. 49. Did you serve that time?

A. Yes; six months.

Q. 50. You were arrested the second time when?

A. September 29th, 1925.

Q. 51. Where were you arrested?

A. In the City of Providence.

Q. 52. And what was the charge against you?

A. I do not know myself; inducing, or I do not know what they call it.

Q. 53. I have here a copy of the mittimus made out in your name in the Superior Court, Washington County, issued to the warden of State prison stating that you have been this day sentenced, for harboring for prostitution, for a term of [fol. 15] three years from the 29th of December, 1925, at State prison. Does this mittimus refer to you?

A. Yes.

[No question numbered 54.]

Q. 55. Did you plead guilty?

A. Pleaded nolo.

Q. 56. And the sentence was three years in State prison?

A. Yes.

Q. 57 Any fine?

A. No.

Q. 58. How long did you serve?

A. Sixteen months and 14 days.

Q. 59. Then you were paroled by the State Board?

A. Yes.

Q. 60. When?

A. About May 24th, 1927.

Q. 61. Were you running a house of ill fame?

A. I was not running it.

Q. 62. You were arrested in connection with the house?

A. I was arrested for inducing this young lady that calls there.

Q. 63. There is no young lady's name in the mittimus?

A. That is what that means.

Q. 64. It states that you were harboring for prostitution. Did you have this young woman out there?

A. I drove her down there.

Q. 65. Were you connected with the management of the place?

A. The lease was in my name, the other fellow was running it.

Q. 66. You mean James Ritchie was running the house?

A. He got two years for running the house of ill fame.

Q. 67. And the house was in your name?

A. The lease was in my name; he was paying me $15 a week for the place.

Q. 68. Who did you get the house from?

A. The owner.

Q. 69. Who was that?

A. I do not know his name; it is on the lease.

Q. 70. Did you pay the rent?

A. I did.

Q. 71. How much was the rent?

A. $30 a month.

Q. 72. And you claim that Ritchie was the proprietor and you were employed there?

A. I was not employed there; I was up there that time to collect the money he had to give me.

Q. 73. And you brought this young woman down there?

A. Yes.

Q. 74. What is her name?

A. I do not know her name, only by her first name.

[fol. 16] Q. 75. You brought her from where to the house?

A. When I met her she asked me if I was going to the city, and asked if I could give her a ride down, and on the way down there she stated she wanted to get some clothes, and after she told me she was going to a place, that she was married and did not live with her husband. And when I asked her where she was going and she told me the place, of course I knew the place. I did not think when she hopped in that I was taking her down there; I volunteered to take her there, and when I got down there went to collect my rent, and that was how the girl was caught. She did not tell the truth in court. Why didn't she say who was with her? If they ask me I will tell them I was with her.

Q. 76. You did not stay there that night?

A. No.

Q. 77. Who raided the house?

A. The State cops.

Q. 78. With Mr. De Avila?

A. No; there was a sergeant, and a few more.

Q. 79. You were not there then?

A. I was there the time the house was raided about eight or nine o'clock.

Q. 80. Was that the same day you brought the girl down?

A. Three days later.

Q. 81. Had you stayed over night?

A. No, I did not.

Q. 82. How old is this young woman?

A. I do not know.

Q. 83. Is she married?

A. Yes.

Q. 84. Is she a young woman?

A. I could not tell; they all look young now.

Q. 85. Who have you got in the United States now?

A. I got a brother Gaetano, and sisters Rafaela and Anina; father and mother are dead.

Q. 86. What was your mother's name?

A. Bridiga Campobiano.

Q. 87. How many girls have they out there?

A. Two of them. I never saw the other one.

Q. 88. Saving any money now?

A. I am working every day.

Q. 89. Your brother owns the business?

A. Yes.

Witness, sworn, testified as follows:

[fol. 17] Q. 1. What is your name and address?
A. Gaetano Costanzo, 35 Upper Street, Providence, R. I.
Q. 2. How old are you?
A. Born 1892; thirty-six next birthday.
Q. 3. Born in Italy?
A. Yes.
Q. 4. How long are you in the United States?
A. About twenty years.
Q. 5. Are you a citizen of this country?
A. Yes; have full papers.

By Attorney James E. Dooley:

X Q. 6. You are the owner of this gasoline station at 776 Charles Street, Providence, R. I.?
A. Yes.
X Q. 7. Is your brother Alberto living with you?
A. Yes.
X Q. 8. At your home?
A. Yes.
X Q. 9. Is he working?
A. Since he came out.
X Q. 10. Are you giving him steady employment?
A. Yes.
X Q. 11. And will you give him steady employment?
A. Certainly.
X Q. 12. His mother and father are dead?
A. Yes.
X Q. 13. All his brothers and sisters are in this country?
A. Yes.
X Q. 14. He has no relatives in Italy at all?
A. No.
X Q. 15. Is there any one over there he could go to if he is sent back?
A. No.
X Q. 16. Practically alone if he was sent over there?
A. Yes.
X Q. 17. You are paying him a weekly salary?
A. Yes.
X Q. 18. And will continue to do so?
A. Yes.

X Q. 19. His wife divorced him while he was in jail?
A. Yes.
X Q. 20. She was awarded the custody of the children?
A. Yes.

[Hearing continued until Tuesday morning at 10 o'clock.]

[fol. 18] Continuation of Hearing July 5, 1927, at United States Immigration Office, Providence, R. I.

Present:
Alien, Alberto Costanzo.
Attorney James E. Dooley.
Inspector W. M. Clark.
Inspector F. J. McGovern, Secretary.

To alien:

Q. 90. You understand that this is a continuation of your hearing and that you are still under oath to tell the truth?
A. Yes.

By Attorney James E. Dooley:

X Q. 91. You have been in this country since you have been five years old?
A. Yes.
X Q. 92. And you have never left the United States since you came here?
A. No.
X Q. 93. Your father and mother are dead?
A. Yes.
X Q. 94. All your brothers and sisters are in this country?
A. Yes.
X Q. 95. You have no friends or relatives that you could go to if you were sent back to Italy?
A. No.
X Q. 96. You went to school in this country?
A. Yes.
X Q. 97. And after you left school worked until this trouble?
A. Yes.
X Q. 98. You are now working for your brother at a gasoline station?
A. Yes.

X Q. 99. And if you remained here it is your plan to continue to work for him?

A. Yes.

X Q. 100. After this trouble and while you were in jail your wife divorced you?

A. Yes.

X Q. 101. And she was awarded the custody of the two children?

A. Well, I do not know about that; I suppose she was.

X Q. 102. You leased this house at Saunderstown that was raided?

A. Yes.

X Q. 103. What did you lease it for?

A. To put up a gasoline station and a little store.

X Q. 104. And did you put up the gasoline station?

[fol. 19] A. No; I found out that it was not necessary because somebody else was trying to put up a gasoline station there and was refused, so I knew it was not necessary.

X Q. 105. It was your intention to operate a gasoline station, but after you leased it you found out you could not get permission?

A. Yes.

X Q. 106. You say you let the place to James Richie?

A. Yes.

X Q. 107. And he agreed to pay you $15 a week?

A. Yes.

X Q. 108. Did you have any agreement other than he was to pay you $15 a week?

A. I do not know just what you mean.

X Q. 109. Is that the only agreement you had with him, that he was to pay you $15 a week?

A. I had to be there twice a week because he did not have a machine, and he was supposed to give me $15 a week.

X Q. 110. Did you have anything to do with the management or operation of the place?

A. No.

X Q. 111. Did you get any money from it, other than the rent?

A. No, sir.

X Q. 112. Was there any agreement that you would get any money?

A. No.

X Q. 113. Did you ever stay around that place?

A. No.

X Q. 114. Were you present other than at the times you were collecting rent?

A. No; only the night it was raided.

X Q. 115. And were you there then to collect the rent?

A. Yes.

X Q. 116. At the time you took this lease, were you given the privilege of taking it for two months with the option to give it up at that time, or continue for a period of one year?

A. Yes.

X Q. 117. And when you made this agreement with James Richie for him to take the place, did he agree to take the place at the end of two months?

A. Yes.

X Q. 118. And at that time transfer it to his name?

A. Yes.

X Q. 119. And you were to have nothing further to do with it?

A. Yes.

X Q. 120. You said you brought this girl down there?

A. Yes.

X Q. 121. Did you receive anything for taking her down there?

A. No.

[fol. 20] X Q. 122. Did you have anything to do with inducing her to go there?

A. No.

X Q. 123. Did you have any agreement with her of any kind?

A. No.

X Q. 124. Any agreement as to what she was to do when she got there?

A. No.

X Q. 125. Did you ever have any agreement with her that you were to receive money from her?

A. No.

X Q. 126. Did you ever receive money from her?

A. No.

X Q. 127. Did you see her again after you brought her that night?

A. Only on the night of the raid.

X Q. 128. And you were there on the night of the raid collecting rent?

A. Yes.

X Q. 129. Did you ever stay over night in that house?

A. No.

X Q. 130. After this raid you were indicted for harboring for prostitution, pleaded nolo to that indictment?

A. Yes.

X Q. 131. How did you come to plead nolo?

A. I was told to.

X Q. 132. By whom?

A. By my attorney.

X Q. 133. Did he tell you if you pleaded nolo you would get a deferred sentence?

A. Yes.

X Q. 134. Who was your attorney?

A. Thomas Dorney.

X Q. 135. You pleaded nolo, which is equivalent to pleading guilty, upon the advice of your attorney Mr. Dorney, and with the understanding that you were to be given a deferred sentence?

A. Yes.

X Q. 136. Would you have pleaded nolo and admitted you were practically guilty if you had understood that you were to be sent to jail?

A. No, I would not.

X Q. 137. Do you know whether or not this girl you gave the ride to was a girl of good moral character or not?

A. Well, I do not know about her only what people told me; I could not tell myself.

X Q. 138. Her reputation, as you know it, she was not of good moral character?

A. That is what I heard about her; I knew she was going there for that purpose.

X Q. 139. You were sentenced to three years, and you [fol. 21] were paroled about May 24th, 1927, and that was at the time you were first eligible for parole?

A. Yes.

X Q. 140. You were never before the parole board before?

A. No.

X Q. 141. Before this trouble happened, what line of business did you work at?

A. Twisting in the mill.

X Q. 142. Cotton mill?
A. Yes.
X Q. 143. Had you worked steadily at that occupation?
A. Yes.
X Q. 144. Have you ever had anything to do with running road houses or managing road houses?
A. No.
X Q. 145. Did you have any agreement or understanding with James Richie where you were to get any profits from the operation of this house?
A. No.
X Q. 146. He was just to pay the rent?
A. Yes.
X Q. 147. And after two months he was to take the lease?
A. Yes.
X Q. 148. Was Richie indicted and convicted for running this house?
A. Yes.
X Q. 149. He was sent to jail?
A. Yes.
X Q. 150. He is now in jail?
A. I do not know.
X Q. 151. He pleaded guilty in court to operating this house?
A. Yes.
X Q. 152. You do not speak very good Italian?
A. No; I understand more than I talk.
X Q. 153. You would have to learn the language all over again, if you were sent to Italy?
A. Yes.

By Inspector Clark:

Q. 154. When did you lease this house, Albert?
A. August 1, 1925.
Q. 155. Do you remember the owner's name?
A. No.
Q. 156. How long did you lease it for?
A. One year, at $30 a month.
Q. 157. And you turned it over to Richie at $15 a week?
A. Yes.
Q. 158. And made an agreement to be there twice a week with supplies that he might purchase?
A. Yes.

[fol. 22] Q. 159. Was he down there all the time?

A. Yes.

Q. 160. Why did you have to be there to receive the supplies?

A. He would telephone and I bought the things and would take them down to him, as I had a machine, and I agreed to do this until he bought a machine.

Q. 161. Was there anything in your lease from the owner that prevented you from sub-leasing it?

A. No.

Q. 162. You could have sub-leased it to him, if you wanted to?

A. Yes.

Q. 163. You only had to say so?

A. Yes.

Q. 164. That agreement was between yourself and Richie?

A. Yes.

Q. 165. Anyone else besides Richie?

A. No.

Q. 166. How about the other two boys that were working for Richie?

A. One was Nick, I do not know his last name, and John Barome; I do not know if he had anything to do with it; he was running a house on Broad Street, and his name was there, because we had to have a witness to it.

Q. 167. Isn't it a fact that you know this woman pretty well?

A. No.

Q. 168. How long have you known her?

A. Four days.

Q. 169. When was that?

A. The day I took her out there, and the Saturday night the place was raided.

Q. 170. Have you anyone in Italy at all?

A. Not that I know of; my last aunt died when she was 92 years old.

Q. 171. What was her name?

A. I do not remember.

Q. 172. In the event the Government orders your deportation, what baggage will you have?

A. I will have nothing.

Q. 173. What further have you to say as to why you should not be deported in conformity with law?

A. I have got nowhere to go to; I was a boy when I came here; I never refused to do anything the law wished, and I would be willing to go to the front, willing to be sent to the army now in place of deportation; I respect the United States and I feel it is my country, as I came here as a small boy; I know it is no honor to be deported from the United States.

[fol. 23] Q. 174. Have you taken out first papers since you were 21?

A. No; I did not think it was necessary being here since I was a small boy.

By Attorney James E. Dooley:

X Q. 175. Is it your intention to take out citizenship papers?

A. Yes.

SUMMARY AND RECOMMENDATION

Alberto Costanzo, age 25, is an alien; native of and subject of Italy; literate; laborer by occupation; married; his wife Laura Germano Costanzo secured a divorce from this alien while he was serving time in State prison; they have two children, both of whom were born in the United States, and according to the testimony the wife when she secured her divorce from the alien was given the custody of the children. This alien testifies that he does not remember when he came to the United States, the month, year or name of boat, or where he landed in this country, but states that he came here when he was five years of age and that he has continued to live here ever since that time; that his father was never naturalized and that he himself has taken no steps to become a citizen of the United States. The alien testifies that he was arrested in 1916 or 1917 in connection with a stolen automobile, was convicted and sentenced to six months in jail, which time he served, and that he was arrested in Providence, R. I., on September 29, 1926, and was indicted for harboring for prostitution, pleaded nolo, which is equivalent to guilty, and was sentenced to three years in State prison at Howard, R. I., as per attached

mittimus, of which time the alien served sixteen months and fourteen days. The alien has two brothers and a sister in the United States, both of his parents are dead, and he claims not to have any relatives in Italy.

I recommend that this alien be deported in that he has been found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes.

In the event of deportation better take an attendant; this alien is young and very active.

[fol. 24] Money: None.

Baggage: None.

Passport: None; Form 617 attached.

Deport: To Torre, Province of Caserta, Italy.

W. M. Clark, Inspector in Charge.

Boston, August 13, 1927.

In re ALBERTO CONSTANZO

This case comes before the Board of Review in warrant proceedings.

No hearing. Attorney James E. Dooley represented alien at the port.

Alien accorded hearing on May 6th and June 29, 1927, at Providence, R. I., by Inspector W. M. Clark. Reopened on July 5, before same Inspector.

The record relates to a native and citizen of Italy, Italian race, aged 24, male, divorced (recently), who landed at New York some time in 1905, ex S. S. unknown.

Alien was released on bond.

Charges: Found managing house of prostitution.

Nearest relatives abroad: None given.

Passport: To be secured. Bureau's aid may be needed.

The alien, so far as known, has resided in the United States since 1905. He has two American born children. His wife divorced him recently. Never took out naturalization papers. He was convicted in 1916 or 1917 of stealing a "machine" and served 6 months in the county jail at Providence, R. I. He was arrested on September 29, 1925,

on the charge of "harboring for prostitution", and was sentenced to three years in prison, actually serving 16 months and 14 days, when he was paroled. He admits that the lease for the house of prostitution was in his own name, though it was run by another man. He paid $30 a month rent, and $15 per week was paid him by the man who ran the place, and went to the house to collect, weekly, the amount due him under the contract or understanding. He [fol. 25] was arrested for taking a girl to this house of prostitution, a girl whom he had met that day and who, estranged from her husband, seems to have been easy prey. This girl remained in the house, together with one other who had been an inmate previously, and she was found therein when the house was raided three days after her entry thereinto. Since his parole the alien has been workin steadily for his brother, who runs a gasoline station.

The attorney brought out the statement that, though the lease for the said house had been in this alien's name, it was to be transferred to the man who ran the place, after the expiration of two months, after which he, the alien, would have nothing more to do with it. However, he admitted that he knew the girl was to enter upon a life of prostitution at the time he took her to the said house.

Despite the claim that the alien had nothing to do with the management of the house of prostitution, it appears from his own admission that he located one girl who agreed to be an inmate of said house, and who was an inmate for about three days, being taken therefrom by the police authorities at the time this alien was arrested. He also admits that he leased the premises, knew the purpose to which it was to be put, and to which it was put, and bought supplies therefor, these being paid for on delivery to the man who was residing on the premises. He also admits that he visited said house twice a week for the purpose of delivering supplies and collecting the rent, and that the latter was just about double the amount which he himself paid to the owner or rentor of the property. The charge, then, that he has been found managing a house of prostitution is sustained by the evidence.

Considered and recommended that the alien be deported to, Italy at Government expense on the following ground:

That he is in the United States in violation of the immigration act of 1917 in that he has been found managing a

house of prostitution, or music or dance hall or other place of amusement or resort habitually frequented by prostitutes.

Howard D. Eberle, Actg. Chairman, Sec'y and Com'r Gen'ls Board of Review.

JWB.

[fol. 26] So ordered.

A. E. Cook, Assistant to the Secretary.

WARRANT—DEPORTATION OF ALIEN

United States of America, Department of Labor, Washington

526/359. No. 55487/62

To Commissioner of Immigration, Boston, Mass.; Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United States Immigration Service:

Whereas, from proofs submitted to me, after due hearing before Immigration Inspector W. M. Clark, held at Providence, R. I., I have become satisfied that the alien Alberto Constanzo, who landed at the port of New York, N. Y., on or about the 15th day of June, 1905, has been found in the United States in violation of the immigration act of February 5, 1917, to wit: That he has been found managing a house of prostitution, or music or dance hall, or other place of amusement, or resort habitually frequented by prostitutes, and may be deported in accordance therewith:

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy the country whence he came, at the expense of the appropriation "Expenses of Regulating Immigration, 1928", including the services of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 26th day of August, 192.. —— ——, Assistant to the Secretary of Labor.

MCV. EFH.

[Stamped:] W. N. Smelser, Aug. 26, 1917, Mails and Files.

[fol. 27] 55487/62

Boston, September 12, 1927.

In re Alberto Constanzo

This case comes before the Board of Review as a request that warrant of deportation be cancelled.

No hearing. Senator Metcalf interested.

This alien was convicted of harboring a prostitute, and sentenced to imprisonment for a a term of three years, of which he actually served about 16½ months. In reviewing the evidence, it was found that he admitted having procured one girl as an inmate of a house of prostitution in which he was interested and which he was managing. Plea is now made for leniency on the ground that he has been in the United States for many years, was not as guilty as others tried at the same time as himself, and that his steady employment since his release from prison should be given some weight. It is also argued that the charge that he was found managing a house of prostitution was not sustained by the evidence.

Considered and recommended that no change be made in the decision of August 13th and that the warrant of deportation remain in effect.

Howard D. Eberle, Actg. Chairman, Sec'y, and Com'r Gen'ls Board of Review.

JWB.

So ordered.

A. E. Cook, Assistant to the Secretary.

[Stamped:] Received Sep. 13, Warrant Division.

[Stamped:] Received Dec. 9, 1927, Warrant Division

55487/62-64

Boston, December 7, 1927.

In re Alberto Costanzo, 24, and Nicola Petrucione, 25

These cases come before the Board of Review for further consideration in warrant proceedings.

[fol. 28] No hearing. Attorney Frank Burke, 625 Hospital Trust Building, Providence, R. I., interested in the case of Alberto Costanzo.

The alien Alberto Costanzo was ordered deported August 13, 1927, on the ground that he had been found managing a house of prostitution. On September 12, 1927, plea for leniency was denied and it was directed that no change be made in the outstanding warrant.

The attention of the department is now called to the fact that warrant of arrest was cancelled in the case of Nicola Petrucione although the evidence showed that he was the actual manager of the resort owned by Alberto Costanzo and this fact is urged as a reason why similar action should be taken as to Costanzo.

The record in the Costanzo case shows that he admitted ownership of the place in question, admitted that he had conveyed to the resort a young woman and that he had been sentenced on December 25, 1925, on the charge of "harboring for prostitution". Although the resort involved in the Petrucione case is the same as that involved in the Costanzo case, the record in the Petrucione case does not contain any evidence that prostitution was carried on therein. In fact, the record contains no evidence to sustain the charge in the warrant. While the record contains a mittimus showing the conviction and sentence of Petrucione, the charge on which he was sentenced was for keeping and maintaining a common nuisance. While this charge applies to houses of ill-fame, it also applies to gambling places, grog shops and places where intemperate, idle dissolute, noisy, or disorderly persons are in the habit of resorting. It cannot be said, therefore, that the conviction of the alien Petrucione sustains the charge in the warrant. The Petrucione case was decided before the Costanzo case came to the attention of the Department and therefore the cases were not considered together.

It is recommended that Mr. Frank Burke, the interested party, be informed that the evidence fully sustains the warrant of deportation in the case of Alberto Costanzo and that no change can be made in the oustanding order. It is further recommended that the attention of the Commis-
[fol. 29] sioner of Immigration at Boston be called to the fact that it was found necessary to cancel the warrant of arrest in the case of Nicola Petrucione because of a lack

of evidence to establish the character of the resort conducted by Petrucione as a house of prostitution. The Commissioner should be directed to submit whatever evidence may be obtainable as to the character of said house in order that the Department may give consideration to the question of instituting new deportation proceedings against Nicola Petrucione.

L. Paul Winings, Chairman, Sec'y, & Com'r Gen'ls Board of Review.

HDE/VBE.

So ordered.

A. E. Cook, Assistant to the Secretary.

Memorandum

55487/62 & 64

January 4, 1928.

The attached files relate to the cases of Nicola Petrucione and Alberto Costanzo.

On March 4, 1926 the Boston office submitted applications for warrants of arrest in the cases of the above-named aliens, the applications in the case of Petrucione charging that he is an alien managing or employed by or in connection with a house of prostitution, or music hall or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, and the application in the case of Costanzo alleging that he had been found managing a house of prostitution, or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes, and the Departmental warrants of arrest were issued on the respective grounds.

In the Petrucione case it was developed that the alien was arrested by the State police on July 6, 1925 for keeping and maintaining a common nuisance. To this charge he pleaded nolo upon the advice of his attorney, which is the equivalent to a plea of guilty, and received a deferred sentence. Subsequently he became identified with another establishment, apparently a house of ill fame, which was [fol. 30] raided and he was sentenced to a term of imprison-

ment of one year in the State prison and to pay a fine of $1,000. The record in the case of this alien was not clear as to whether either establishment with which he was identified was maintained as a house of prostitution, and the Board of Review, without referring the case back to have this point cleared up, recommended cancellation of the warrant which action was approved by the Department.

In the case of Costanzo it appears, although it is not definitely established, that he was connected with the same establishment as the one with which Petrucione was last identified, and that the lease of this place was actually in Costanzo's name, although he claims that he was not the actual proprietor.

It furthermore developed that Costanzo had taken a woman of ill repute to this place and there seems to be no question that it was a house of prostitution which, also, similar to the general run of establishments of that kind, sold intoxicating liquors. Costanzo was given a sentence of three years imprisonment and was paroled after serving sixteen and one half months.

Apparently the only reason Petrucione was not given a sentence of equal length was because it was not developed at the time of his sentence that he was connected with the same establishment as the one with which Costanzo was identified, or at least this apparently was not brought out before the grand jury.

The only excuse which can be offered for cancellation of the warrant in the one instance and ordering the deportation in the other is that the Board of Review did not have the evidence before it that Petrucione was identified with a house of prostitution. There can be no question that Costanzo was rightly ordered deported, and therefore it does not resolve itself into a question of whether the warrant in his case should be cancelled, simply because a similar action was taken in the case of Petrucione, as it is believed that the only logical course to follow is to re-institute deportation proceedings in the case of Petrucione and develop the actual facts which were glaringly omitted, or neglected, during the course of the original proceedings.

[fol. 31] Copy

526/359

January 5th, 1929.

Mr. Michael N. Cardarelli, 277 Admiral Street, Providence, R. I.; Mr. Antonio Landi, 13 Greeley Street, Providence, R. I.

GENTLEMEN: You are advised that we are in receipt of a letter from our Department at Washington stating in part that the bond you executed in the case of the alien, Albert or Alberto Costanzo, has been declared breached and the penalty forfeited.

It is, therefore, directed that you forward us a certified check in the sum of One Thousand Dollars in settlement of the amount involved.

If the check is not received here within a reasonable time the matter will be taken up with our Department at Washington in order that suit may be brought looking to the collection of the amount named in the bond.

Very truly yours, Anna C. M. Tillinghast, Commissioner.

JJF.

File No. 55487/62. Incl. No. 8404

July 13, '31.

File constituting the record of the Bureau of Immigration, Washington, D. C., in the case of Alberto Constanzo or Costanzo or Albert Costanzo.

George J. Harris, Assistant Commissioner General of Immigration. The Assistant.

July 13th, thirty-one.

IN UNITED STATES DISTRICT COURT

MEMORANDUM OF RECOGNIZANCE—July 29, 1931

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on

the fourth Tuesday of June, in the year of our Lord one thousand nine hundred and thirty-one, to wit: July 29, 1931.

[fol. 32] In Case No. 4548, Civil

In re ALBERTO COSTANZO, Petitioner for Writ of Habeas Corpus,

vs.

ANNA C. M. TILLINGHAST, United States Commissioner of Immigration

Personally appeared Alberto Costanzo, of 211 Harvard Avenue, Allston, in said District, principal, and Lexington Surety and Indemnity Company, a corporation duly organized and existing under the laws of the State of New York and having its principal offices in the City of New York and a local office in the City of Boston in the Commonwealth of Massachusetts, by Francis Mahoney, its Attorney in Fact, thereto duly authorized, surety, and severally acknowledged themselves, their heirs, and their administrators to be jointly and severally indebted unto the United States of America in the sum of three thousand dollars, to be levied on their goods and chattels, lands and tenements, and in want thereof upon their bodies, to the use of the said United States, if default be made in the performance of the condition following, to wit:

The condition of this recognizance is such, that if the said Alberto Costanzo, principal, shall personally appear before said District Court of the United States, now holden in Boston, from day to day and term to term hereafter on every day and term to which this case may be continued or on which it may be called, and shall there answer to said United States in the matter of said Petition for Writ of Habeas Corpus, and shall receive and abide the order, decree, judgment, or sentence of this court and of any Appellate Court thereon, and not depart without leave, and so from time to time until said case be finally disposed of, if not previously surrendered or discharged, then this recognizance to be void, otherwise to remain in full force, power, and virtue.

In witness whereof, said principal and surety have hereto set their hands, this twenty-ninth day of July, 1931.

Alberto Costanzo. Lexington Surety & Indemnity Company. Francis Mahoney, Attorney-in-Fact. (Seal Lexington Surety and Indemnity Company, a corporation duly organized and existing under the laws of the State of New York and having its [fol. 33] principal offices in the city of New York and a local office in the city of Boston, in the Commonwealth of Massachusetts.)

Taken in pursuance of an order of said District Court and signed and acknowledged before me.

Helen I. Tweedy, Deputy Clerk.

I approve said surety.

John W. Schenck, Assistant United States Attorney.

In United States District Court

Petition of Alberto Costanzo for Appeal—Filed August 26, 1931

Now comes the petitioner, Alberto Costanzo, and appeals to the Circuit Court of Appeals from the order of the District Court of the United States for the District of Massachusetts denying his petition for a writ of habeas corpus.

By His Attorney, Walter E. Brownell.

August 26, 1931.

Appeal allowed.

James A. Lowell, United States District Judge.

In United States District Court

Assignment of Errors—Filed August 26, 1931

Now comes the petitioner in the above-captioned case and bases his appeal from the order of the District Court of the United States for the District of Massachusetts in denying his petition for a writ of habeas corpus upon the following specific grounds:

1. The denial of the petition for a writ of habeas corpus was in violation of Article VIII of the Articles of Amendment to the Constitution of the United States which provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unjust punishments inflicted."

2. The extenuating circumstances pertaining to the petition warrant the exercise of discretion on the part of the [fol. 34] court in its consideration of a petition for a writ of habeas corpus, notwithstanding the specific wording of the Immigration Act of February 5, 1917.

By His Attorney, Walter E. Brownell.

Bond on appeal for $250.00, approved and filed August 26, 1931 omitted in printing.

[fol. 35] Citation, in usual form, showing service on John W. Schenck, omitted in printing.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[Memorandum.—Orders of enlargement of time for docketing case to, and including, December 10, 1931, are here omitted. A. I. Charron, Clerk.]

[fol. 37] In United States Circuit Court of Appeals for the First Circuit, October Term, 1931

No. 2643

Alberto Costanzo, Petitioner, Appellant,

v.

Anna C. M. Tillinghast, United States Commissioner of Immigration, Respondent, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Wilson, and Morton, JJ.

Opinion of the Court—February 25, 1932

Bingham, J.:

This is an appeal from a decree of the District Court for Massachusetts denying a writ of habeas corpus and dismiss-

ing the petition. The petitioner, Alberto Costanzo, is now about thirty years of age, a native of Italy. He has resided in this country since 1905. He has two American born children. His wife has recently divorced him. Neither the petitioner, nor his father, long since dead, became naturalized citizens. He was convicted in 1916 or 1917 of stealing an automobile and served six months in the county jail at Providence, R. I. He was again arrested September 29, 1925, on the charge of harboring for prostitution and was sentenced to three years in prison, of which he served sixteen months and fourteen days, when he was paroled.

[fol. 38] March 16, 1926, a warrant for his arrest was issued by the Department of Labor on the ground that he had been found in the United States in violation of the Immigration Act of February 5, 1917 (39 Stat. 889) for the following reason: "That he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort, habitually frequented by prostitutes." May 6, 1926, he was taken into custody under the warrant and accorded a hearing before an immigration inspector at Providence, who made a report to the Department of Labor sustaining the allegations of the warrant. Thereafter the Board of Review, having examined the record and report of the immigration inspector, made its report to the Secretary of Labor recommending that the alien be deported to Italy. And the Assistant Secretary of Labor, being satisfied that the alien was found in the United States in violation of the Immigration Act of February 5, 1917, on August 26, 1927, issued a warrant of deportation ordering that he be returned to Italy, the country whence he came. Thereupon the appellant filed his petition for a writ of habeas corpus and, the case having been heard in the District Court, the order or decree above set forth was entered, from which this appeal is taken.

The provisions of law under which these proceedings were had and deportation ordered are found in Section 19 of the Act of February 5, 1917, 39 Stat. 889.

The Circuit Court of Appeals for the Ninth Circuit, in construing Section 19 of the Act, in Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455, 456, said:

It "provides for the deportation of certain classes of aliens upon the warrant of the Secretary of Labor. In some

instances the deportation is for acts committed before entry; in others for acts committed after entry. In some instances there is a time limit of five years; in others there is a time limit of three years, and in still others there is no time limit at all. The section first provides that, at any time within five years after entry, any alien who, at the time of entry, was a member of one or more of the classes excluded by law, shall be deported. Then follow provisions for the deporta- [fol. 39] tion of different classes of aliens, with different time limits, or with no time limit, until we reach the provision, 'Any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude,' for which no time limit is fixed or specified."

In that case deportation proceedings had not been instituted within five years after entry of the alien into the country, and the question was whether the five year limitation contained in the first clause of Section 19 was exclusive and applied to the last clause above quoted relating to an alien convicted, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude, for which no time limit was specified. It was there held that the five year limitation contained in the first clause of Section 19 was not exclusive and did not apply to the later clauses of the section, which fixed no time limit.

This construction has been upheld by this court as applied to that clause of Section 19 relating to managing a house of prostitution, etc., here under consideration. Cafaro ex rel. Filippo v. Tillinghast, 31 Fed. (2d) 384; id. 1009. In that case it appeared that Filippo entered the United States in 1900; that, in 1926, he was arrested for deportation on the ground that he had, while in the United States, been found managing a house of prostitution and receiving, sharing in or deriving benefits from the earnings of prostitutes. There the only quuestion was whether the five year limitation applied to the class of aliens to which the relator had been found to belong. In the District Court it was held that it did not apply. And when the case came before this court on appeal (31 Fed. (2d) 1009), the judgment or decree of the District Court was affirmed.

The same conclusion has been reached with respect to this clause of Section 19 in Ranieri v. Smith, 49 Fed. (2d)

537 (7th Cir.). For other cases in which circuit courts of appeals have held that the five year limitation provided for in the first clause did not apply to other clauses containing no specific limitations, see Tillinghast v. Di Pierro, Fed. (2d) (1st Cir.) decided December 17, 1931; Lauria v. United States, 271 Fed. 261 (2d Cir.), certiorari denied, 257 [fol. 40] U. S. 635; Pillisz v. Smith, 46 Fed. (2d) 769 (7th Cir.); McLeod v. Nagle, 48 Fed. (2d) 189 (9th Cir.); Weedin v. Tayokichi Yamada, 4 Fed. (2d) 455 (9th Cir.). The only case reaching a contrary conclusion, which we have been able to find, decided by a circuit court of appeals, is Hughes v. Tropello, 296 Fed. 306, 309 (3rd Cir.).

We regard the question as settled, at least for this circuit, and that the order of deportation in this case was not rendered invalid by the fact that the deportation proceedings were not instituted (Sec. 20 of the Immigration Act of February 5, 1917; United States ex rel. David v. Tod, 289 Fed. 60; Nocchi v. Johnson, 6 Fed. (2d) 1) within five years after the alien's entry into the country.

The ground assigned and particularly relied upon by the petitioner in his brief is that he has continuously resided in the United States for the last twenty-five years, during which time he has married and had a family, and that the order of the Department of Labor ordering his deportation to Italy is in violation of Art. 8 of Articles of Amendment to the Constitution of the United States, which provides that "cruel or unjust punishment [should not be] inflicted". This contention is without merit. It is well settled that "an alien resident in the United States may be deported for any reason which Congress has determined will make his residence here inimical to the best interests of the government"; and that "deportation, when ordered by the proper executive officer of the government, is not visited upon the alien as a penalty for any crime, and the fact that the reason assigned for his deportation may constitute a crime under the local law does not make the hearing upon deportation a trial in a criminal case, to be conducted under the rules of evidence that apply to such a trial," or the order of deportation a punishment within the provisions of the amendment above quoted. Skeffington v. Katzeff, 277 Fed. 129; Fong Yue Ting v. United States, 149 U. S. 698; Zakonaite v. Wolf, 226 U. S. 272, 275, and cases there cited.

The order or decree of the District Court is affirmed.

[fol. 41] IN UNITED STATES CIRCUIT COURT OF APPEALS

CONCURRING OPINION

MORTON, J. (concurring):

I concur for the reason that the present case is covered by the decision of this court in Cafaro ex rel. Filippo v. Tillinghast, 31 Fed. (2d) 384.

As an original question this construction of the statute seems to me erroneous, and the view of it taken in Hughes, Commissioner, v. Tropello, 296 F. R. 306, which I followed—the Cafaro case not being called to my attention—and somewhat elaborated in Tillinghast v. Di Pierro, Fed. (2d) (1st Cir.) decided December 17, 1931, to be the correct one. There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations. The only careful analysis of the language of section 19 which has come to my attention is in McLeod v. Nagle, Commissioner, 48 Fed. (2d) 189 (C. C. A. 9), where much reliance is placed on the use of the semi-colons between the different clauses; it is thought that they operate to cut off the limiting words, "At any time within five years," with which the section begins from all but the first clause. Inasmuch, however, as the semi-colons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb "shall * * * be taken into custody and deported," with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation.

[fol. 42] On January 8, 1932, this case came on to be heard, and was fully heard by the court, Honorable George H. Bingham and Honorable Scott Wilson, Circuit Judges, and Honorable James M. Morton, Jr., District Judge, sitting.

Thereafter, to wit, on February 5, 1932, the opinion of the court (page 37) and a concurring opinion (page 41) were filed, and the following Final Decree was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—February 25, 1932

This cause came on to be heard January 8, 1932, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, February 25, 1932, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed.

By the Court.

Arthur I. Charron, Clerk.

MEMORANDUM RE STAY OF MANDATE

Thereafter, to wit, April 20, 1932, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which ac-

companied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,807. U. S. Circuit Court of Appeals, First Circuit. Term No. 110. Alberto Costanzo, petitioner, vs. Anna C. M. Tillinghast, United States Commissioner of Immigration. Petition for a writ of certiorari and exhibit thereto. Filed May 25, 1932. File No. 36,807.

FILE COPY

No. 110

FILED
MAY 25
CHARLES ELMO

Supreme Court of the United States.

October Term, 1931

ALBERTO COSTANZO,

Petitioner,

v.

ANNA C. M. TILLINGHAST,

United States Commissioner of Immigration,

Respondent.

PETITION FOR THE WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

BRIEF FOR PETITIONER.

WILLIAM H. LEWIS.

Supreme Court of the United States

OCTOBER TERM, 1931.

ALBERTO COSTANZO,
PETITIONER,

v.

ANNA C. M. TILLINGHAST,
UNITED STATES COMMISSIONER OF IMMIGRATION,
RESPONDENT.

PETITION FOR THE WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respectfully represents Alberto Costanzo, petitioner in the above entitled cause, that he is an alien formerly domiciled and residing in Providence, in the State of Rhode Island, now a resident of the City of Boston and State of Massachusetts, and prays that a writ of certiorari issue from this Court to the Circuit Court of Appeals for the First Circuit to review the judgment of that Court entered in the above entitled cause on the 25th day of February, 1932, affirming the judgment and decree of the United States District Court for the District of Massachusetts as of July 27, 1931, dismissing his petition for the writ of habeas corpus. The record of the District

Court appears upon pages 5 and 6 of the transcript of the record in the Circuit Court of Appeals. The opinion, not yet published, is annexed to certified copies of the record.

QUESTIONS PRESENTED FOR REVIEW.

1. The first question presented for review is whether an alien who has been in the country twenty years may be arrested and deported for conviction twenty years later of a charge of "harboring for prostitution" and sentenced to three years in prison therefor.

2. May an alien, who has committed such a crime more than five years after entering the United States, be arrested and deported at any time?

3. Does the provision in Section 19 of the Immigration Act of 1917, as follows: "That at any time within five years after entry, any alien," etc., apply to an alien who has been convicted of the crime above stated twenty years after entry?

(All three questions are intended to raise the same issue.)

4. Does Section 19 of the Immigration Act of 1917 make the crime of "harboring for prostitution" a cause for which an alien may be deported?

5. Was there sufficient evidence in the record upon which the Immigration authorities could properly find that the alien was "managing a house of prostitution"?

STATEMENT OF THE CASE.

The statement of the case as appears from the transcript of the record shows that the petitioner Alberto Costanzo came from Italy with his parents in 1907, he then being about five years of age, and went to Providence to live with his folks; that he is or was married and has two children born in the United States; that he was arrested in Providence September 29, 1925, on a charge of "harboring for prostitution." Upon a plea of nolo he was sentenced to State's Prison at Cranston, Rhode Island, for a term of three years, and actually served sixteen months and fourteen days, and was then paroled.

The evidence is somewhat equivocal, as the record shows. The petitioner sublet a house where a girl was found practicing prostitution, and stated he had nothing to do with her going down there, except that she asked him if he knew where the place was, and he gave her a ride. There is no evidence that he stayed with the girl himself.

REASONS FOR GRANTING THE PETITION.

There is practically a dissenting opinion in this case by Morton, J. We say dissenting because the Judge concurs on a single case in this Circuit, *Cafara ex rel. Filippo* v. *Tillinghast*, 31 *Fed.* (2d) 384., which is nothing more than a per curiam decision.

Judge Morton's opinion is as follows:

"MORTON, J. (concurring). I concur for the reason that the present case is covered by the decision of this court in *Cafaro ex rel. Filippo* v. *Tillinghast*, 31 Fed. (2d) 384.

As an original question this construction of the statute seems to me erroneous, and the view of it taken in *Hughes*,

Commissioner, v. *Tropello*, 296 F. R. 306, which I followed, —the Cafaro case not being called to my attention,—and somewhat elaborated in *Tillinghast* v. *DiPierro*, Fed. (2d) (1st Cir.) decided December 17, 1931, to be the correct one. There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations. The only careful analysis of the language of section 19 which has come to my attention is in *McLeod* v. *Nagle, Commissioner*, 48 Fed. (2d) 189 (C. C. A. 9), where much reliance is placed on the use of the semi-colons between the different clauses; it is thought that they operate to cut off the limiting words, "At any time within five years," with which the section begins from all but the first clause. Inasmuch, however, as the semi-colons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb "shall . . . be taken into custody and deported," with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation."

BRIEF IN SUPPORT OF THE PETITION.

Undoubtedly Congress has unlimited power and authority over aliens resident and domiciled in this country,—but did Congress intend, by the provisions of the Immigration Act of February 5, 1917, to say that an infant who came to this country as a babe in its mother's arms, after ten or twenty years in this country, or even fifty, might be taken into custody and deported upon an executive warrant for the commission of the crime involving moral turpitude?

Section 19 provides: "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law;". The period of limitation is not enlarged until after the second semi-colon, when it is as follows: "any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials;". There Congress undoubtedly provided for deportation of aliens advocating what is known as anarchism or possibly communism, who at any time after entry should be found conducting themselves as anarchists or advocating principles and doctrines hostile to the Government of the United States or American Institutions.

The very next clause again establishes the period of limitations, as follows: "any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, *com-*

mitted within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry:". There Congress provided that an alien who had so conducted himself as to be sentenced twice to terms of imprisonment of a year or more for crimes involving moral turpitude might be arrested and deported at any time,—although that construction might be open to question, but given its widest latitude that is all that could be contended.

After the sixth semi-colon Section 19 provides that, "any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;". If the petitioner comes under the class "as having been connected with the business of prostitution", there is no provision in the Act with regard to this class which permits the deportation *at any time* of such an alien. He must come under the general provision of Section 19, "that at any time within five years after entry", and his crime not having been committed within five years after entry he is not liable and subject to deportation within the purview of Section 19.

The next clause following the last semi-colon gets back to

three years limitation: "at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials" might be taken into custody and deported.

To cure the latter defect as to aliens who had unlawfully entered the United States, Congress enacted in the Immigration Act of 1924, Section 14, 43 Stat. at Large 153, as follows: "Any alien, who at any time after entering the United States, is found to have been at the time of entry not entitled under this Act to enter the United States, or to have remained therein for a longer time than permitted under this Act, or regulations made thereunder, shall be taken in custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917."

A reading of Section 19 shows that the crime of "harboring for prostitution", upon which the alien was convicted, was not a deportable one. It was upon the conviction of this crime that the Immigration Inspector found that the alien was deportable and recommended his deportation, as appears upon page 23 of the record.

It appears upon page 21 of the record that one Richie was indicted and convicted for running the house in question and was sent to jail; that Richie pleaded guilty to operating the house. The record shows on page 28 that Richie, otherwise known as Nicola Petrucione, — although the evidence showed that he was actually the manager of the resort, yet the warrant for his arrest was cancelled. This appears in the finding of the General's Board of Review, page 28 of the record.

It appears from the record that the alien had a lease of the place, and was paying rent of thirty dollars a month, and he was collecting from Richie, alias, fifteen dollars a week. It also appears upon page 13 that at the time of the alien's ar-

rest his occupation was working in a gasoline station for his brother Gaetano at 778 Charles Street, Providence, R. I., and was receiving $17 a week.

It is difficult to see how upon this evidence the Board could find that the alien, who was merely the landlord or lessee, but not the tenant, was managing the house of prostitution conducted on the premises by Richie or Petrucione.

Undoubtedly, some of the lower Courts in construing this Act favorably to the Government, have indulged in legislation, and decisions in the lower Court are in conflict with each other because of the natural disposition of the Courts to follow the interpretation placed upon the Statute by the Executive Department. The Supreme Court is a Court of justice as well as law.

Respectfully submitted,

WILLIAM H. LEWIS.

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Supreme Court of the United States.

OCTOBER TERM, 1932.

No. 110.

ALBERTO COSTANZO,
PETITIONER,

v.

ANNA C. M. TILLINGHAST,
UNITED STATES COMMISSIONER OF IMMIGRATION.

BRIEF FOR THE PETITIONER.

JURISDICTION.

This case comes to this Court upon a writ of certiorari directed to the United States Circuit Court of Appeals for the First Circuit under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, United States Code Annotated, Title 28, Sec. 347, to review a judgment of that Court affirming the decision of the United States District Court for the District of Massachusetts, dismissing the petition for the writ of habeas corpus, to test the validity of the finding and order of deportation against the petitioner made by the Secretary of Labor on the ground that the petitioner "has been found managing a house of prostitution" in viola-

tion of Section 19 of the Immigration Act of February 5, 1917, United States Code Annotated, Title 8, Section 155.

OPINION OF THE COURT BELOW.

There was no written opinion of the District Court, only an order dismissing the petition (R. 5). The opinion of the Circuit Court of Appeals is reported in 56 Fed. (2d) 566, and appears in this record upon pages 35-40.

THE RECORD.

The petitioner was taken into custody by the immigration authorities July 8, 1931 (R. 2), upon a warrant issued by the Secretary of Labor, March 16, 1926 (R. 4), charging that he was illegally in the country in "that he has been found managing a house of prostitution, or music, or dance hall, or other place of amusement, or resort, habitually frequented by prostitutes." He was given a hearing by an Immigrant Inspector at Providence on the 21st day of January, 1926 (R. 7 and 8), and a further hearing on May 6, 1926 (R. 11-23), and a further hearing June 29, 1927 (R. 25), and recommendation made by the Immigrant Inspector (R. 25) that the petitioner be deported because "he has been found managing a house of prostitution". On August 13, 1927, the petitioner was given a hearing before the Secretary of Labor and the Board of Review, and the finding of the Immigrant Inspector was affirmed and a warrant issued for the deportation of the petitioner on August 13, 1927 (R. 27 and 28). The petitioner was arrested upon this warrant July 8, 1931, and thereupon filed a petition for the writ of habeas corpus (R. 1), and upon a hearing before Lowell, J., on the 27th day of July, 1931, the

petition was dismissed (R. 5). An appeal was taken to the Circuit Court of Appeals, and on February 25, 1932, the Circuit Court of Appeals handed down an opinion affirming the judgment of the District Court (R. 35).

CONTENTIONS OF THE PETITIONER.

1. There was not sufficient evidence in the record upon which the Secretary of Labor or the District Court could properly find that he was "managing a house of prostitution."

2. The petitioner contends that the Secretary of Labor and the Lower Courts misconstrued the law in holding that under the provisions of Section 19 of the Immigration Act of 1917, U. S. C. A., Title 8, Section 155, an alien found "managing a house of prostitution" might be deported irrespective of the time of his entry.

ARGUMENTS, POINTS AND AUTHORITIES.

CONTENTION I.

The first proposition involves a brief consideration of the facts.

The petitioner Alberto Costanzo is an alien immigrant now about thirty-one years of age (R. 1 and 8) hailing from Torre, Province of Caserta, Italy. He came to this country about the year 1905 (R. 4 and 9) at the age of five, and resided at Providence in the State of Rhode Island (R. 8). He was arrested in Providence, Rhode Island, November, 1926 (R. 8), charged with the offense of "harboring for prostitution"

(R. 8); pleaded not guilty, but upon advice of counsel changed his plea to nolo (R. 8) upon the promise that he would get a deferred sentence (R. 21).

On December 29, 1925, he was sentenced to three years in State's Prison (R. 8), and was paroled from State's Prison on May 24, 1927, (R. 15 and 21), having served about sixteen months.

At the time of the petitioner's arrest on July 8, 1931, he was working for his brother in a gasoline station at 778 Charles Street, Providence, Rhode Island, receiving $17 a week (R. 13). Before the petitioner was arrested by the State Authorities on a charge of harboring for prostitution, he had been working at twisting in a cotton mill (R. 21) and had worked steadily (R. 22).

The petitioner had leased a house at Saunderstown, Rhode Island (R. 19), intending to put up a gasoline station there, but could not get a permit. A lease, with the option of giving it up after two months or continuing a year, was obtained by him from the owner (R. 20). He let the place to one James Richie for $15 a week (R. 19), intending at the end of his option of two months to transfer the lease to Richie (R. 20). *Richie was indicted and sent to jail for running this house of prostitution* (R. 22).

The petitioner met a woman on the road, whom he did not know, and who asked him for a ride to Providence. She told the petitioner that she was married and not living with her husband, and said that she was going to this place at Saunderstown. The petitioner volunteered to take her down there, as he was going there to collect his rent (R. 16). He did not remain at the house that night. Three nights later he was in the house when the raid was made by the police (R. 16). On the night of the raid he was there collecting his

rent (R. 21). He did not induce the girl to go to the house or receive any money from her (R. 20). He had known the woman only four days before she was arrested (R. 23).

The petitioner made an arrangement with Richie that he would call at the house twice a week to sell him supplies (R. 22). Richie would telephone the petitioner, and he would buy the things that Richie wanted and take the things down to him, the petitioner having a machine. Richie did not have one, and the petitioner agreed to do this for him until he, Richie, had bought a machine (R. 23 and 19).

The petitioner denied categorically that he was running the house, or that he was employed there (R. 15). He did not have anything to do with the management or operation of the house. He did not get any money other than his rent (R. 19). He drove the girl down to the place, but did not have anything to do with inducing her to stay there (R. 20).

There was no other evidence to make out a case against the petitioner of "managing a house of prostitution". There is some prejudicial evidence in the record to the effect that the petitioner had served six months for the larceny of an automobile; that his wife had divorced him while he was serving time. The examining Immigrant Inspector and the Board of Review, meaning the Secretary of Labor, were not obliged to believe the petitioner's story, but they had no right, without other evidence, to believe and find that the opposite of the petitioner's story was true, *and there was no evidence to contradict the story.*

It is doubtful as to whether the petitioner could have been found guilty under the State law of Rhode Island of "harboring for prostitution", but that is quite a different thing from being guilty of the deportable charge of "managing a house of prostitution". The petitioner was not or-

dered deported upon the ground that he had been convicted of "harboring for prostitution" or stealing an automobile. Indeed, he could not have been deported upon these charges. The specific charge upon which the Secretary's order was based is "Charges: Found managing house of prostitution." (R. 25)

The evidence, while showing that the petitioner had some connection with the house, fell far short of showing him to have been the manager. "Manager," according to the Century Dictionary, is: "One charged with the management, direction, or control of an affair, undertaking, or business;".

In *Katz* v. *Commissioner of Immigration*, 245 Fed. 316, an alien was arrested, charged with deriving support from a prostitute. The Court said, "It is quite unreasonable to suppose that the dry goods salesman or the grocer, who sells his goods to a fallen woman and takes the price from her, or a cabman, who carries her for hire and receives the hire from her, or, as in the present case, the landlord, who rents her abode to her and takes rental therefor, all or any of them were designed to be classified as persons who receive or derive benefit from the earnings of a prostitute, and such, we are impressed, is not the intendment of the statute."

In *United States ex rel. Louros* v. *Lindsey*, 51 Fed. (2d) 303, an alien was arrested and charged with assisting a prostitute, although the alien had lived with this prostitute. It was held that he was not deportable under the Statute simply for giving or providing medicine or hospital treatment for her when she was ill.

Strench v. *Pedaris*, 55 Fed. (2d) 597, was a case where Pedaris was arrested for being an inmate in a house of pros-

titution, and ordered deported. He was released upon a habeas corpus, the only evidence against him being that he conducted a coffee shop in a building where he lived with his wife, she being a prostitute and practicing prostitution, there being no evidence that the alien was a pimp or in any manner profited from the prostitution practiced by his wife.

It will be noted that the petitioner is not charged with assisting a prostitute or being employed in a house of prostitution, and we assume had there been evidence of such charges it would have been introduced.

In *United States* v. *Lindsey*, 51 Fed. (2d) 141, the relator was arrested upon a warrant of deportation on the ground "he has been found managing a house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather". The relator apparently ran some sort of house where there was gambling, or liquor was sold, and which was frequented by lewd women. The Court here squarely held that the relator must be discharged, because upon such evidence he could not be found guilty of managing a house of prostitution.

There is no evidence upon which the Board of Review could base its conclusion (R. 28) to the effect, "In reviewing the evidence, it was found that he admitted having procured one girl as an inmate of a house of prostitution in which he was interested and which he was managing." There is absolutely no evidence of any such admissions in the record.

As to the correctness of the conclusion of the Board of Review or the Secretary, it appears (R. 29) that one Petrucione was arrested as being the actual manager of the resort said to have been owned by Costanzo, yet the warrant for his arrest and deportation was cancelled because there was no

evidence that prostitution was carried on at the place. The record in the Petrucione case showed that he had been convicted and sentenced on the charge of maintaining a common nuisance. While a common nuisance might mean a place where disorderly persons congregate, the conviction of Petrucione on that charge would not sustain the warrant.

Here stress is laid upon the allegation that Costanzo "owned the place". There is no such evidence. The evidence is that he leased the place and in turn let it to Richie who conducted the place at one time, and who was convicted for running the place as a disorderly house.

The law with regard to hearings in these cases is fully stated in *Kwock Jan Fat* v. *White*, 253 U. S. 454, at Page 457. "It is fully settled that the decision by the Secretary of Labor, of such a question as we have here, is final, and conclusive upon the courts, unless it be shown that the proceedings were 'manifestly unfair,' were 'such as to prevent a fair investigation,' or show 'manifest abuse' of the discretion committed to the executive officers by the statute (*Low Wah Suey* v. *Backus*, 252 U. S. 460), or that 'their authority was not fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law.' *Tang Tun* v. *Edsell*, 223 U. S. 673, 681, 682, 56 L. ed. 606, 610, 32 Sup. Ct. Rep. 359. The decision must be after a hearing in good faith, however summary (*Chin Yow* v. *United States*, 208 U. S. 8, 12, 52 L. ed. 369, 370, 28 Sup. Ct. Rep. 201, *and it must find adequate support* in the evidence (*Zakonaite* v. *Wolf*, 226 U. S. 272, 274, 57 L. ed. 218, 220, 33 Sup. Ct. Rep. 31.)"

CONTENTION II.

The petitioner came to this country about the year 1905, when he was five years old (R. 8 and 9). He was actually arrested upon this charge July 8, 1931 (R. 1), although the warrant was issued the 16th day of March, 1926, while the petitioner was in prison (R. 4), so that at the time of arrest upon this warrant the petitioner had been in the United States about twenty-five years.

The question is, whether under the proper construction of Section 19 of the Immigration Act of 1917, U. S. C. A. Title 8, Section 155, he may be deported at any time after entry upon a charge of "found managing a house of prostitution".

No contention is here made that the warrant of deportation is in violation of Article 8 of Articles of Amendment to the Constitution of the United States, as was said by the Circuit Court of Appeals, "This contention is without merit". That contention must be and is abandoned.

The Circuit Court of Appeals held that the first clause in Section 19, as follows: "At any time within five years after entry", did not apply to "any alien who manages or is employed by, in or in connection with any house of prostitution", and that such an alien might be deported at any time. The Section is a rather long one and is printed in the appendix to this brief, as printed in the official compilation of the Immigration Laws.

The reasoning of the Court was based upon the authority of certain Circuit Court and District Court cases. Section 19 was intended to be and is a general Statute of Limitations as to causes of action (so to say) contained therein.

The heading of Section 19, as contained in Title 8, Section 155, U. S. C. A. is persuasive at least of that view; that

is to say, "DEPORTATION WITHIN CERTAIN TIME OF ALIENS ENTERING OR FOUND IN UNITED STATES IN VIOLATION OF LAW." This section contains ten semicolons, innumerable commas, and is tied together by the verb "shall" upon the warrant of the Secretary of Labor "be taken" into custody and "deported". The word "deported" is followed by a color, and then follows five provisos, separated by colons.

The authorities on punctuation say, among other things, "The semicolon is used between expressions in a series which have a common dependence on, or relation with, other words or expressions at the beginning or end of a sentence." Bigelow.

In *Grkic* v. *United States*, 3 Fed. (2d) 276, the Circuit Court of Appeals for the 7th Circuit, construing Section 19, said: "In punctuation, the semicolon is used to separate a completed thought in one clause from other related matter in another clause of the sentence. In Section 19 the semicolon has been used to separate the various classes subject to deportation."

See also *McLeod* v. *Nagle*, 48 Fed. (2d) 189.

The first clause of Section 19 is as follows: "At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law;". That makes sense and is completed nine semicolons thereafter by the verb "shall be taken into custody and deported". This section applies to all persons who are excluded under Section 3 of the Act.

The period of limitation is enlarged in the third clause

or subdivision set apart with a semicolon, when it provides that, "any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials;". That is perfectly clear that that class of aliens may be deported irrespective of any time of entry.

The next clause set apart by a semicolon provides that "any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing;". To complete the sentence should be added, "shall be taken into custody and deported".

The next subdivision provides that any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction of a crime involving moral turpitude, committed within five years after entry, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry;. Here one conviction and sentence of a crime involving moral turpitude must be committed within five years to subject the alien to deportation. If he is convicted twice for crimes involving moral turpitude, there the statute is enlarged again and he may be deported any time after entry. It is suggested that if the petitioner had been convicted of a crime of keeping a house of ill fame or disorderly house, which would be equivalent to managing such a house, and sentenced to a year, he could not be deported because it is more than five years after his entry into the United States. If he had been convicted twice of this offense and sentenced to less than a year on each, he could not be deported at any time.

The second clause following the last class and period of limitations established therein after a semicolon, is as follows: "any alien who manages or is employed by, in, or in connection with any house of prostitution", etc. ends with a semicolon without naming any period of limitation as to time. If Congress had meant to establish no time limit, it could have said so by the phrase used in the preceding sections, "at any time". *What period of limitation governs deportation for such an offense?* Now, did Congress mean by this clause dealing with an alien who is connected with the management of a house of prostitution or derives benefit from the earnings of a prostitute, or manages or is employed in a house of prostitution, or assists a prostitute, to qualify or extend the Section with reference to imprisonment? Certainly the two are inconsistent.

Again, another clause provides, "any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;". No time limit is set out in that clause, but it was governed by the five year limit in the first clause because he was one of the excluded classes under Section 3. The only reason why such an alien may now be deported at any time is by reason of the act of 1924, Section 14, 43 Stat. at Large 153, which provides that any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States—, shall be taken into custody and deported in the manner provided by Section 19, Act of February, 1917.

This would seem to be a clear interpretation by Congress that the first clause with regard to deportation of aliens who are within the excluded class was five years. The only way to extend the time would be by legislation.

The last clause is as follows: "at any time within three years after entry, any alien who shall have entered the United States" at a time and place other than designated by the Immigration Commissioner shall be deported.

The third proviso renders the interpretation of the Statute still more confusing, and provides further, "The provisions of this Section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States." That proviso would seem to repeal all of the periods of limitation set up in the several clauses. The rational interpretation of this proviso is that the provisions of the Act are retroactive except as to the exceptions named therein.

Judge Morton in his concurring and dissenting opinion in this case said: "As an original question this construction of the statute seems to me erroneous, and the view of it taken in *Hughes, Commissioner*, v. *Tropello*, 296 F. R. 306," which he followed in *Di Pierro* v. *Tillinghast*, 45 Fed. (2d) 658, to be the correct view. That is, that the five year limitation governed. His opinion is elaborated in the *Di Pierro* case which was overruled by the Circuit Court of Appeals for the First Circuit, 54 Fed. (2d) 459.

Judge Morton said in that case, "Section 19 is long, covering more than a page in the Statutes at Large. It begins, 'That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law.' Then follow nine distinct clauses separated by semicolons providing that 'any alien who' has done or shall do certain acts 'shall, upon the warrant of the Secretary of Labor, be taken into custody and deported.' The words 'any alien' in the opening clause and in each of the clauses referred to are subjects of the verbs

'shall be taken,' etc., which follow the last clause. Before the words 'any alien' in the ninth clause are the words, 'at any time within three years after entry'; these words modify the time provision in the first line. The sentence is truly Germanic in its length and complication. It seems to me to have been the intention that the words, 'at any time within five years after entry' in the first line should apply to and cover the eight following clauses, until we reach the words 'at any time within three years after entry,' which changes the period of limitation. No other construction makes the section grammatical."

In the instant case Judge Morton said, "Inasmuch, however, as the semicolons are interposed between the different subjects of the common verb and the verb itself, their use is so unorthodox as to furnish little guide in interpreting the section. They are really used like commas, and I do not think they separate the important words with which the section begins from the verb 'shall . . . be taken into custody and deported,' with which the sentence concludes, nor from the intermediate clauses which do not contain their own limitation provisions, or which are not governed by the three-year limitation."

A case following Judge Morton's construction, is *Hughes* v. *Tropello,* 296 Fed. 306. This case contains a long discussion of the subject. Tropello had been excluded from deportation on the ground that he was feeble minded on November 12, 1915. He was permitted to land on a bond, went to reside with his mother in Philadelphia. In April, 1919, a warrant of arrest was issued. The alien was taken into custody on the ground that he was in the United States in violation of the Immigration Act of 1917. The proceedings resulted in an order of deportation dated April 5, 1921. The Court held

that the proceedings must be begun within five years; otherwise the Statute of Limitations would avail nothing.

CASES RELIED UPON BY THE GOVERNMENT.

Ex Parte Gin Kato, 270 Fed. 343, is a District Court case, less than a page, where an alien was found employed in or in connection with a house of prostitution. The facts contained in the opinion are rather meager. Apparently the alien came into the United States in 1884, and this case came up in 1920. The Court relied upon the proviso: "The provisions of this section—shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States—".

Lauria v. *United States,* 271 Fed. 261, United States Circuit Court of Appeals for the 2nd Circuit. There the petitioner for the writ of habeas corpus was shown to have been convicted of a crime involving moral turpitude before his entry into the United States. He entered the United States in 1910. There the Court held, "Congress intended by Section 19 to extend the time for deportation to the specific cases mentioned beyond the five year period, and that the aliens might be taken into custody and deported at any time." The Court here also relied upon the third proviso. This case is not helpful because there would be no doubt about the law now, under the Amendment of 1924.

Ranieri v. *Smith,* 49 Fed. (2d) 537. This was a District Court case. An alien entered the United States June 21, 1924. On December 19, 1929, he was arrested by an Immigration Inspector upon a warrant which charged him with managing a house of prostitution, etc. The Judge, in that case, simply

held that the evidence supported the finding and without any discussion on the construction of the Statute, said, "The evidence abundantly supports the finding, and the five year Statute of Limitations does not apply". Citing, *Ex parte Gin Kato*, 270 Fed. 343. *Cafaro* v. *Tillinghast*, 31 Fed. (2d) 384. *Pillisz* v. *Smith*, 46 Fed. (2d) 769.

Pillisz v. *Smith*, 46 Fed. (2d) 769, Circuit Court of Appeals for the 7th Circuit. There the petitioner was admitted June 26, 1922. On October 3, 1929, he was arrested on a warrant charging him with having been convicted of manslaughter, a crime involving moral turpitude prior to his entry. In this case the Court held that there were twelve different groups in Section 19, which are subject to deportation, and limitations as to time are separately stated in five, "viz: 1, 3, 4, 5 and 12 (our numbers)." As to the other seven there is no limitation of time specified in the clauses which describe the classes. The Court held squarely that where there was no time limit specified that the alien "might be taken into custody and deported at any time." No authority cited for that position.

Weedin v. *Yamada*, 4 Fed. (2d) 455, Circuit Court of Appeals, 9th Circuit. Yamada entered the United States in 1902. His entry at the time was lawful. He resided here until 1907, when he entered a plea of guilty to an information charging him with the crime of assault with a deadly weapon with intent to inflict bodily harm. He was sentenced to imprisonment to the state penitentiary for the term of two years. In 1908 he was paroled and continued to reside in the United States until 1913. Then he made a trip to Japan, visited his parents and returned to the United States in 1914

with a passport, and continued to reside in the United States until 1924, when a warrant was issued by the Secretary for his arrest on the ground that he had admitted the commission of a felony involving moral turpitude prior to his entry to the United States. There the crime was committed in the United States, and more than five years had elapsed.

The petitioner there claimed that he was protected by the five year limitation. It was admitted that the petitioner was one of the classes excluded by Section 3, but the Court there concluded that he also belonged to the special class for which no time limit is fixed.

The Court said, "We think Congress intended to pronounce classes of aliens who are undesirable and, by general provision of law, exclude all within five years, but provided specifically that certain classes, including the class to which the appellant belongs, might be taken into custody and deported at any time." It is going a long way to say that Congress in the first clause gave the petitioner the benefit of the five-year Statute of Limitations, and in another clause took it away from him. The two cannot stand together and cannot be reconciled.

McLeod v. *Nagle*, 48 Fed. (2d) 189, Circuit Court of Appeals, 9th Circuit. This is a case of a conviction of a crime involving moral turpitude prior to entry. This case was decided in 1931, and is not helpful. There the Court admits that the petitioner was one of the excluded class, which would put him within the five year limitation, but he was in the special class also. After a long discussion of punctuation marks, the Court bases its final decision upon the proviso, "The provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry".

CONCLUSION.

The petitioner put his case as strongly as it could be made when asked: (R. 24), Q. 173. "What further have you to say as to why you should not be deported in conformity with law?

A. "I have got nowhere to go to; I was a boy when I came here; I never refused to do anything the law wished, and I would be willing to go to the front, willing to be sent to the army now in place of deportation; I respect the United States and I feel it is my country, as I came here as a small boy."

Judge Morton, in his concurring and dissenting opinion, (R. 39) said: "There are possibilities of shocking cruelty, as the cases show, in a deportation statute having no period of limitation. There are the same humanitarian reasons for limitation of the right to deport as there are for limitation on prosecutions for crime. It seems to me that section 19 is a recognition of this fact and is intended as a general statute of limitations on deportations."

This alien knows no country except the United States. His virtues and his vices were all acquired in America. If a man came here when he was five years of age and lived to 90, and if in his 89th year he was "found managing a house of prostitution", he might be deported. A statute of limitations was meant to be a forgiveness of sin.

II.

All the evidence in this case, except the records of the commission of crimes which have nothing to do with the excluding decision, comes from the lips of the petitioner. He

was working steadily, before circumstances out of which this warrant arose, in a cotton mill, and working, after he was paroled before his arrest on this warrant, at a gasoline station. Whatever his connection with the house in Saunderstown was, it cannot be said, except by adding to the evidence not in the record, that he was in any sense a manager of the place. Moreover, two other persons, Richie and Petrucione, were convicted of running this place.

If the Court should be satisfied, it need not go further to consider the second perplexing contention, meaning the Statute of Limitations.

III.

It is perfectly clear that in cases where Congress meant that there should be no period of limitation, it said so. An alien, advocating the teaching of anarchy or the overthrow of government, etc.,—an alien sentenced twice for more than a year for the commission of a crime involving moral turpitude.

Congress by Section 14 of the Act of 1924 enlarged the time limit as to the excluded classes from five years to any time,—"Any alien who at any time after entering the United States is found to have been at the time of entry not entitled under this Act to enter the United States—shall be taken into custody and deported." That amendment carries with it the clause, "Any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude;" because such an alien would be within the excluded classes of Section 3 of the Act of February 5, 1917.

The proviso that "The provisions of this Section, with

the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States". If it is not a provisions making the Act retroactive except as to those arrested and convicted once or twice for a crime involving moral turpitude, it would repeal all of the periods of limitation set up in the main body of the clause. Generally speaking, a proviso is to restrict its operation, and not to enlarge it.

Respectfully submitted,

WILLIAM H. LEWIS.

APPENDIX.

Sec. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one of more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who

is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided,* That the marriage to an American cit-

izen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

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No. 110

In the Supreme Court of the United States

OCTOBER TERM, 1932

ALBERTO COSTANZO, PETITIONER

v.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The District Court rendered no opinion. The majority and concurring opinions in the Circuit Court of Appeals (R. 37, 41) are reported in 56 F. (2d) 566.

JURISDICTION

The judgment sought to be reviewed was entered February 25, 1932. (R. 42.) The petition for certiorari was filed May 25, 1932. Although he does not so state, petitioner presumably invokes the jurisdiction of this Court under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

If they may properly be considered, the petition for certiorari presents the following questions:

1. Whether, under Section 19 of the Immigration Act of 1917, an alien found managing a house of prostitution must be taken into custody and deported within five years after entry or whether such arrest and deportation may be effected at any time after entry.

2. Whether there was sufficient evidence to support the administrative finding that petitioner was managing a house of prostitution.

STATUTE INVOLVED

Section 19 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 889–890 (U. S. C., Title 8, Sec. 155), reads in part as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; * * * any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or

where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * * *Provided further,* That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: * * *.

STATEMENT

Petitioner, a citizen of Italy, who entered this country about 1905, was arrested on an immigration warrant dated March 16, 1926, which charged him with being in the country unlawfully in that, after entry, he was found managing a house of prostitution. (R. 4, 11, 13, 24.) It appears from petitioner's testimony at the various hearings before the immigration authorities that he was born in Italy and came to this country at the age of five. He has never taken any steps to become a citizen. (R. 9, 12, 13, 14, 18.) In 1916 or 1917 he was convicted of stealing a machine, for which he served six months in jail. (R. 14.) In December, 1927, he was convicted in a State court in Rhode Island, following a plea of "nolo," of the charge of "harboring for prostitution," and was sentenced to three years in prison, of which sentence he served sixteen months and fourteen days, when he was

paroled. (R. 7–8, 14–15.) As the result of information supplied by the judge who sentenced him, an investigation, out of which the present charge grew, was begun by the immigration authorities. (R. 8.) Although petitioner denied that he was running a house of prostitution, he admitted that the premises were leased in his name, and that, while he paid but $30.00 a month rent, he subleased the premises for $60 a month to one Ritchie, who, he claimed, ran the place, and was sentenced, on account thereof, to two years in prison. (R. 15, 19, 21–22.) He also admitted that on one occasion he took a girl to this place in his car, knowing her to be a prostitute. (R. 15–16, 19–20.) She apparently remained there as one of the two inmates, for three days later, when the place was raided by the State police, she was still there. (R. 16, 20.) Petitioner was also present at the time the house was raided. (R. 16.) At least twice a week petitioner was at the place to collect the "rent" and to bring "supplies." (R. 19, 21–22.) While he was serving his sentence for the State offense, petitioner's wife divorced him and was awarded the custody of their two children. (R. 17, 18.)

As a result of this testimony the immigration authorities found that petitioner was managing a house of prostitution, and on August 26, 1927, issued a warrant for his deportation. (R. 24–26.) Petitioner thereupon filed in the United States District Court for Massachusetts a petition for writ of habeas corpus, which appears to have been based

principally upon the ground that the effect of deporting him would be to impose additional punishment for the crime against the State of Rhode Island which he had already expiated, and that deportation would consequently constitute cruel and unusual punishment, in violation of the Eighth Amendment. (R. 1–4.) A summons was then issued to respondent to show cause why the writ should not be granted. (R. 5.) After a hearing the court dismissed the petition. (R. 5–6.) On appeal its judgment was affirmed. (R. 42.)

ARGUMENT

Before discussing the questions which petitioner seeks to present, it should be noted that the petition and supporting brief do not comply with the rules of this Court. They contain no assignment of errors and no reference to the statutory provision supporting this Court's jurisdiction. (Rules 12, 27, 38, par. 2.)

Furthermore, so far as the record discloses, neither of the two questions which petitioner now urges were raised in the District Court or covered in his assignment of errors filed in connection with his appeal to the Circuit Court of Appeals. (R. 33.) The only questions discussed by that court were whether a five-year period of limitation applied to petitioner's deportation, and also whether deportation would constitute cruel and unusual punishment. The latter question is not discussed in the petition and supporting brief, and evidently has

been abandoned as clearly without merit. (See *Bugajewitz* v. *Adams*, 228 U. S. 585, 591.)

I

The charge made against petitioner in the warrant of arrest (R. 11) and in the warrant for deportation (R. 26) was that he was found, after entry, managing a house of prostitution. It was not, as he assumes in his statement of the questions presented (Pet. p. 2), "harboring for prostitution," the offense of which he was convicted in the State court.[1] Deportation was not based upon that conviction. Of course, as a prerequisite to deportation, an alien need not be convicted of any offense if he is in fact found to be managing a house of prostitution.

This Court has recently declined to review a decision holding, as did the court below in the instant case, that Section 19 of the Immigration Act of 1917 (*supra*, p. 2) does not prescribe a five-year period of limitation upon the deportation of

[1] The record does not disclose the particular section of the State statutes which petitioner was convicted of violating. Section 6, Chap. 399, General Laws of Rhode Island, 1923, makes it an offense punishable by imprisonment for not more than five years " for any person to secure a female for a house of ill-fame, or to procure for a female a place as inmate of a house of ill-fame, or by any promise * * * to cause, induce, persuade or encourage a female to * * * become an inmate of a house of ill-fame, or enter a place in which prostitution is encouraged or allowed, or remain therein as such inmate * * *."

aliens falling within the class to which petitioner was found to belong. *Ranieri* v. *Smith,* 49 F. (2d) 537 (C. C. A. 7th); No. 361, October Term, 1931, certiorari denied October 26, 1931, 284 U. S. 657. In that case the Government pointed out in its brief in opposition that while time limitations affecting deportability are expressly prescribed in Section 19 as to certain classes of aliens, there is none affecting those engaged in activities connected with prostitution, and that the third proviso of the section, which reads—

> That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: * * *,

prevents the application of time limitations to aliens of the class here involved. The Government's brief also referred to the decision of the Circuit Court of Appeals for the Ninth Circuit in *McLeod* v. *Nagle,* 48 F. (2d) 189, which dealt with a parallel class of aliens and in which the court held that the construction for which petitioner contends would be contrary to commonly accepted grammatical rules, saying (p. 190):

> * * * the beginning phrase, "at any time within five years," can not be carried over to each of the succeeding clauses; each of the latter must be modified only by the time limit specifically stated therein, and, if no time limit is expressed, then the section must

be interpreted to mean "at any time after the entry of the alien into the United States."

In addition to the *McLeod case*, the Government cited the following cases as supporting the decision in the *Ranieri case*: *Pilliss* v. *Smith*, 46 F. (2d) 769, 771 (C. C. A. 7th); *In re DiFilippo* (*Cafara* v. *Tillinghast*), 31 F. (2d) 384 (Mass.), aff'd. 31 F. (2d) 1009 (C. C. A. 1st); *Lauria* v. *United States*, 271 Fed. 261 (C. C. A. 2d), certiorari denied, 257 U. S. 635; *Ex parte Gin Kato*, 270 Fed. 343 (W. D. Wash.).

Since the denial of the petition for certiorari in the *Ranieri case* two cases have been decided by the Circuit Court of Appeals for the First Circuit sustaining the Government's position, the instant case and *Tillinghast* v. *Cresswell ex rel. Di Pierro*, 54 F. (2d) 459,[1] which reversed a decision rendered by the concurring judge in the instant case while sitting in a District Court (45 F. (2d) 658). In each of these cases the authorities are reviewed at length and several additional decisions supporting the Government's view are cited which were not referred to in the Government's brief in the *Ranieri case*. In both opinions the Circuit Court of Appeals stated that the only case reaching a contrary conclusion which it found is *Hughes* v. *Tropello*,

[1] In this case a petition for certiorari was denied by this Court on May 31, 1932 (No. 980, October Term, 1931), because the petition was not filed within the time provided by law.

296 Fed. 306 (C. C. A. 3d). It is true that in that case the Circuit Court of Appeals for the Third Circuit stated, with reference to Section 19, that "the five-year limit therein fixed must prevail, unless such limitation is removed by an exception specified therein," but it should be pointed out that the Government in that court conceded in its brief (pp. 9–10) that the applicable period of limitations was five years, and addressed its argument to the question whether, under Section 19, deportation proceedings must not only be instituted but concluded within the five-year period. The analysis of the *Tropello* decision contained in the opinion in the *Di Pierro case* leaves no doubt as to its unsoundness upon the point involved in the instant case. It was decided in 1924, and was apparently ignored by the various Circuit Courts of Appeals which have since passed upon the question until the decision of the *Di Pierro case* in 1931. Its influence has been negligible, and even if it may be considered as in conflict with the instant decision, we do not think that the conflict requires the exercise by this Court of its supervisory power at the present time.[3] Certiorari may, we submit, well await another decision by the Circuit Court of Appeals for the Third Circuit rendered in the absence of a con-

[3] The petitioner in the *Ranieri case*, *supra*, did not rely upon the *Tropello case* as presenting a conflict of decisions upon the question of the proper construction of Section 19 of the Immigration Act of 1917. The *Tropello case* was not discussed in the Government's brief in opposition.

cession by the Government and in the light of the numerous cases sustaining the Government's position which have been decided since the *Tropello case.*

II

As stated above (*supra,* p. 5), the contention that there was insufficient evidence to warrant the immigration authorities in finding that petitioner was managing a house of prostitution was not raised in his assignment of errors in the court below nor passed upon by that court.

The evidence has been summarized at pp. 3–4, *supra.* Even if the question were now open, we think the evidence was clearly sufficient to support the order of deportation, particularly in view of the rule expressed by this Court in *Vajtauer* v. *Commissioner of Immigration,* 273 U. S. 103, 106—

> Upon a collateral review in *habeas corpus* proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince the court of the essential unfairness of the trial. *Tisi* v. *Tod, supra* [264 U. S. 131, 133].

CONCLUSION

The case was correctly decided below, and we do not think it presents any question requiring the consideration of this Court at the present time. The petition should be denied.

Respectfully submitted.

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No. 110

In the Supreme Court of the United States

OCTOBER TERM, 1932

ALBERTO COSTANZO, PETITIONER

v.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

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No. 110

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v.

ANNA C. M. TILLINGHAST, UNITED STATES COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The order of the District Court appears at R. 5. The majority and concurring opinions of the Circuit Court of Appeals (R. 35, 39) are reported in 56 F. (2d) 566.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 25, 1932. (R. 40.) Petition for certiorari was filed on May 25, 1932, and was granted on October 10, 1932. (R. 40.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether under Section 19 of the Immigration Act of 1917, an alien found managing a house of prostitution must be taken into custody and deported within five years after entry, or whether such arrest and deportation may be effected at any time after entry.

2. Whether there was sufficient evidence to support the administrative finding that petitioner was managing a house of prostitution.

STATUTE INVOLVED

Section 19 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 889–890 (U. S. C., Title 8, Sec. 155), reads as follows:

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law, or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one

year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior

to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported:

Provided, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as

aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

STATEMENT

Petitioner, a citizen of Italy, who entered this country about 1905, was arrested on an immigration warrant dated March 16, 1926, which charged him with being in the country unlawfully in that, after entry, he was found managing a house of prostitution. (R. 1, 3, 10, 27.) It appears from petitioner's testimony at the various hearings before the immigration authorities that he was born in Italy and came to this country at the age of five.

He has never taken any steps to become a citizen. (R. 8, 12, 13, 18.) In 1916 or 1917 he was convicted of stealing a machine, for which he served six months in jail. (R. 14.) In December, 1925, he was convicted in a State court in Rhode Island, following a plea of "nolo," of the charge of "harboring for prostitution," and was sentenced to three years in prison, of which sentence he served sixteen months and fourteen days, when he was paroled. (R. 6, 8, 14–15, 21, 24–25.) As the result of information supplied by the judge who sentenced him, an investigation, out of which the present charge grew, was begun by the immigration authorities. (R. 7–8.)

Although petitioner denied that he was running a house of prostitution, he admitted that the premises were leased in his name, and that, while he paid but $30.00 monthly rent, he subleased the premises for $15 per week to one Ritchie, who, he maintained, operated the place as a house of ill fame, and was sentenced, on account thereof, to two years in prison. (R. 15, 19, 22.) He also admitted that on one occasion he took to this place in his car, a girl whom he had heard was not of good moral character, and that he knew she was going there for the purpose of prostitution. (R. 15–16, 20–21.) She apparently remained there as one of the inmates, for three days later, when the place was raided by the State police, she was still there. (R. 16, 20.) Petitioner was also present at the time the house was raided. (R. 16, 21.) At least twice a

week petitioner was at the place to collect the "rent" and to bring "supplies," according to agreement between him and Ritchie. (R. 19, 22–23.)

As a result of this testimony the immigration authorities found that petitioner was managing a house of prostitution, and on August 26, 1927, issued a warrant for his deportation. (R. 25–28.)

Petitioner thereupon filed in the United States District Court for Massachusetts a petition for writ of *habeas corpus*, which appears to have been based principally upon the ground that the effect of deporting him would be to impose additional punishment for the crime against the State of Rhode Island which he had already expiated, and that deportation would consequently constitute cruel and unusual punishment, in violation of the Eighth Amendment. (R. 1–3.) A summons was issued to respondent to show cause why the writ should not be granted. (R. 4.) After a hearing the court dismissed the petition. (R. 5.) On appeal its judgment was affirmed. (R. 40.) The assignment of errors shows that petitioner based his appeal to the Circuit Court of Appeals on only two grounds: 1. The District Court erred in not concluding that deportation was a cruel and unusual punishment; 2. The District Court abused its discretion in not granting the petition for a writ of habeas corpus, "notwithstanding the specific wording of the Immigration Act of February 5, 1917." (R. 34–35.) Neither of these questions was raised in the petition for certiorari.

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SUMMARY OF ARGUMENT

The legislative history, the administrative construction, and the judicial analysis of the statute show that Section 19 of the Immigration Act of 1917 imposed no limit upon the time after entry within which it is permissible to deport an alien found managing a house of prostitution.

A deportation order is to be upheld, in *habeas corpus* proceedings, if there is evidence to support the administrative findings upon which the order is based. In the instant case the officials were clearly justified in concluding that petitioner was managing a house of prostitution, and the Court should not again inquire into the issue, particularly in view of the fact that petitioner now seeks to raise the question of the sufficiency of the evidence for the first time.

ARGUMENT

I

THE ORDER OF DEPORTATION WAS VALID, ALTHOUGH NO STEPS WERE TAKEN TO EXPEL PETITIONER WITHIN FIVE YEARS OF HIS ENTRY INTO THIS COUNTRY

The power to exclude or expel any class of aliens is an attribute of sovereignty, and hence Congress may provide for the deportation of undesirable aliens at any time after their entry or admission to this country. See *Fong Yue Ting* v. *United States*, 149 U. S. 698; *Skeffington* v. *Katzeff*, 277 Fed. 129, 131 (C. C. A. 1st); *Lopez* v. *Howe*, 259 Fed. 401 (C. C. A. 2nd), appeal dismissed, 254 U. S. 613. The question to be

decided in the instant case is whether the Immigration Act of 1917 imposed any time limitation on the exercise of that power in the case of aliens found managing houses of prostitution.

The Immigration Act of February 20, 1907 (c. 1134, Sec. 3, 34 Stat. 898, 899), provided that alien women or girls might be deported if found in a house of prostitution, or practicing prostitution, within three years after entry into this country. The Act of March 26, 1910 (c. 128, Sec. 2, 36 Stat. 263, 264), amended the 1907 Act by making such an alien deportable at any time after admission to the United States. See *Bugajewitz* v. *Adams*, 228 U. S. 585; *Ex parte Cardonnel* 197 Fed. 774 (N. D. Cal.); *Siniscalchi* v. *Thomas*, 195 Fed. 701 (C. C. A. 6th); *Chomel* v. *United States*, 192 Fed. 117 (C. C. A. 7th), certiorari denied 223 U. S. 723; *Dickman* v. *Williams*, 183 Fed. 904 (S. D. N. Y.). The 1910 amendment of the Act of 1907, in the same section, contained the further provision that—

> Any alien * * * connected with the management of a house of prostitution * * * or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported * * *.

It is clear that under the amendment of the 1907 Act, an alien charged, as is the case here, with being the manager of a house of prostitution could be arrested and deported as an undesirable alien at any time, regardless of the date of his entry or admission to this country. Section 19 of the Act of 1917 repeated the wording of the 1910 amendment in substance, so far as it relates to this class of aliens.

In addition, Section 19 defined, either in detail or by general reference, all the cases in which aliens might be arrested and deported. In some instances a definite period of limitation was stated; in others no limitation was indicated. The section further provides "that the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States." No exception is noted which is applicable in such cases as this.

Petitioner contends that where no period of limitation was stated, it was the legislative intent to bar deportation after five years. The section commences with the clause "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; * * *" This clause is followed by many others, connected by semicolons. Some of them contain time limitations, others do not. Among the clauses that follow is the one authorizing deportation of an alien who, like petitioner, has been found managing a house of prostitution. This clause contains no time

limitation, but petitioner maintains that the opening phrase of the section, "That at any time within five years * * *" must be read into each following provision, instead of being limited to the clause it directly modifies.

The history of this legislation shows the Congressional intent not to place any time restriction upon the deportability of aliens adjudged to be undesirable on grounds of sexual immorality or conduct inimical to the public welfare in this respect. Not only is it to be inferred that this was the will of Congress in view of the amendment and extension of the 1907 Act, as noted above, but it is confirmed by committee reports that were before Congress at the time of the 1917 legislation. Senate Report No. 352 to accompany H. R. 10384 (64th Cong., 1st Sess.), states with reference to Section 19 (pp. 14–15):

> * * * To the fullest extent practicable this section has been made to include all of the classes subject to deportation after having entered the country; this is accomplished in two ways, first, by enumerating the classes and indicating the period, where any is set, within which deportation must be effected, and, second, by incorporating in this section, in much plainer language, the provisions of sections 20 and 21 of the existing law. * * *
>
> With respect to each class, wherever a limitation of time is placed upon deportation it has been changed to five years, with the exception of those who merely enter surreptitiously or without inspection * * *,

> the limitation of existing law being three years. *Prostitutes, procurers, and other members of the classes inhibited on grounds of sexual immorality have been subject to deportation without time limitation since the passage of the act of March 26, 1910* (36 Stat. 263); * * * *This policy is continued, and certain other classes equally undesirable have been included within its scope.* * * *[1] (Italics ours.)

See also House Report No. 95, to accompany H. R. 10384 (64th Cong., 1st sess.), p. 1.

The contemporaneous administrative construction of Section 19 gave full effect to the apparent intent of Congress. Rule 22 of the Rules of the Bureau of Immigration of May 1, 1917 (1st ed., May, 1917), stated that all cases in which aliens might be deported under Section 19 fell into divisions enumerated in that rule, and continued as follows:

> With respect to each of these divisions the law is retrospective or not and the time within

[1] It may be noted that in the 68th and 69th Congresses proposals to change the Immigration Laws were introduced in and passed by the House of Representatives. Both bills were apparently designed to render more stringent the then existing legislation. House Report No. 1292, to accompany H. R. 11796 (68th Cong., 2nd Sess.), pp. 6, 9, indicates the belief of the Committee on Immigration and Naturalization that aliens connected with the management of houses of prostitution might be deported without any time limitation, and that therefore change in Section 19 of the 1917 Act was not required in this respect. House Report No. 1348, to accompany H. R. 12444 (69th Cong., 1st Sess.), dealt with a bill similar to that discussed at the preceding session, and indicated the same Congressional belief that no change was needed to make possible the deportation of aliens of this class at any time after entry.

which deportation proceedings may be instituted is limited or not, as indicated below.

(a) Any alien who has entered the United States prior to May 1, 1917, and who at the time of entry was a member of any one of the classes excluded under any provision of the Immigration Act of February 20, 1907; limitation five years; retrospective.

(b) Any alien who has entered the United States subsequent to April 30, 1917, and who at the time of entry was a member of any one of the classes excluded by Section 3, or the last proviso to Section 18, or the last proviso to Section 23, of the Act of February 5, 1917; limitation five years; not retrospective.

* * * * *

(*k*) Any alien who shall be found an inmate of or connected with the management of a house of prostitution; no limitation; retrospective.

(*l*) Any alien who shall be found practicing prostitution; no limitation; retrospective.

(*m*) Any alien who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; no limitation; retrospective.

(*n*) *Any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather; no limitation; retrospective.*

(*o*) Any alien who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; no limitation; retrospective.

> (*p*) Any alien who shall import or attempt to import any person for the purpose of prostitution or other immoral purpose; no limitation; retrospective. * * * (Italics ours.)

Rule 22 was carried forward, in so far as now material, into each succeeding amendment of the Rules of May 1, 1917: 2nd ed. November, 1917; 3rd ed. March, 1919; 4th ed. February, 1920; 5th ed. December, 1920; 6th ed. September, 1921; 7th ed. August, 1922. See also Rules of the Bureau of Immigration of February 1, 1924, p. 31; Rules of the Bureau of Immigration July 1, 1925, p. 63. The consistent construction of the section by the officers charged with its enforcement, and the failure of Congress to repeal or amend the section in the face of this interpretation, despite frequent legislation on other matters arising under the immigration laws, lend substance to the presumption that the administrative construction is correct and hence should not be disturbed. See *McCaughan* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492; *Faweus Machine Co.* v. *United States*, 282 U. S. 375, 378; *Brewster* v. *Gage*, 280 U. S. 327, 336.

Aside from these extrinsic aids to construction, the grammatical structure of Section 19 plainly shows that it permits the deportation, without any time limitation, of one deemed to be undesirable because involved in the management of a house of prostitution. Section 19 provides:

> That at any time within five years after entry, any alien who at the time of entry was

> a member of one or more of the classes excluded by law; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * *

Between the first clause of this sentence and its conclusion appear every class of aliens subject to deportation. Thus, the section provides that "any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property * * *" may be expelled from the country. Another clause states that "at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials" shall be taken into custody and deported. It is petitioner's contention that the opening phrase of this lengthy sentence must be read into each succeeding clause, so that the limitation of "within five years after entry" shall apply to every instance where no definite restriction was stated. This contention disregards the customary rules of grammar and punctuation. The section does no more than compile cases in which the Secretary of Labor has been given authority to deport aliens, leaving the time for deportation unlimited except in a few specific cases.

The clauses in the sentence which comprise the section are of coordinate value. Their combination in one sentence is to be explained on the ground that they are related in thought and purpose, rather than on the ground that they could not stand grammati-

cally independent of each other. As was said in *Grkic* v. *United States*, 3 F. (2d) 276 (C. C. A. 7th): "In punctuation, the semicolon is used to separate a complete thought in one clause from other related matter in another clause of the sentence. In Section 19 the semicolon has been used to separate various classes subject to deportation. * * *" See also *McLeod* v. *Nagle*, 48 F. (2d) 189 (C. C. A. 9th).

The conclusion that the five-year limitation on the deportability of an alien "who at the time of entry was a member of one or more of the classes excluded by law" does not apply to all the other classes of aliens mentioned in the same section, is supported by the third proviso, which follows all of the clauses, reading:

> *Provided further*, That the provisions of this section, *with the exceptions hereinbefore noted*, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States. (Italics ours.)

This proviso, as observed by the Circuit Court of Appeals for the Ninth Circuit in *McLeod* v. *Nagle*, *supra*, p. 191, "seems clearly to indicate, in words as unambiguous as Congress could have used, that, in each subdivision of Section 19 in which no time limit is specifically provided, no time limit is intended."

With one exception, all of the authoritative decisions under Section 19 support the construction for which we contend. See *Tillinghast* v. *Di Pierro*, 54 F. (2d) 459 (C. C. A. 1st), certiorari denied because petition was not filed in time, 286 U. S. 560; *Ranieri* v. *Smith*, 49 F. (2d) 537 (C. C. A. 7th), certiorari denied, 284 U. S. 657; *McLeod* v. *Nagle, supra; Pillisz* v. *Smith*, 46 F. (2d) 769 (C. C. A. 7th); *Millard* v. *Tuttle*, 46 F. (2d) 342 (E. D. La.); *Shladzien* v. *Warden of Eastern District Penitentiary*, 45 F. (2d) 204 (E. D. Pa.); *De Fillipo* v. *Tillinghast*, 31 F. (2d) 384, affirmed, 31 F. (2d) 1009 (C. C. A. 1st); *Weinbrand* v. *Prentis*, 4 F. (2d) 778 (C. C. A. 6th); *Weedin* v. *Yamada*, 4 F. (2d) 455 (C. C. A. 9th); *Grkic* v. *United States, supra; Tzarkis* v. *Ebey*, 3 F. (2d) 277 (C. C. A. 7th); *Lauria* v. *United States*, 271 Fed. 261, 263 (C. C. A. 2nd), certiorari denied, 257 U. S. 635; *Ex parte Gin Kato*, 270 Fed. 343 (W. D. Wash.); *Guiney* v. *Bonham*, 261 Fed. 582 (C. C. A. 9th).

We have found only one decision of a Circuit Court of Appeals holding that Section 19 of the 1917 Act provides generally that the deportation of aliens thereunder can not take place more than five years after entry into this country. In *Hughes* v. *Tropello*, 296 Fed. 306 (C. C. A. 3rd), the court concluded that action against an alien must be concluded within that period to warrant his expulsion. In that case, it may be noted, the question argued before the court was

not whether the five-year limitation in the first clause applied to all clauses of Section 19, but whether proceedings against the offending alien were required to be completed, or merely instituted, within five years after his entry or admission. The Government apparently did not dispute that the five-year period applied. The *Tropello* case has been ignored or expressly disapproved by every Circuit Court of Appeals which has had occasion to consider the matter, and seems unsupported by any authority, judicial, legislative, or administrative.

II

THE QUESTION WHETHER THERE WAS EVIDENCE TO SUSTAIN THE ADMINISTRATIVE FINDING IS NOT PROPERLY BEFORE THE COURT. IN ANY EVENT, THE FINDING IS SUPPORTED BY SUFFICIENT EVIDENCE, AND SHOULD NOT BE DISTURBED

The contention that there was insufficient evidence to warrant the immigration authorities in finding that petitioner was managing a house of prostitution, was not raised in the District Court in the petition for writ of *habeas corpus* or in the assignment of errors in the court below, nor was it passed upon by that court. Accordingly, we submit that the question is not now properly before this Court and that its consideration is not warranted by the circumstances of the case.

Even if the question is treated as open upon this record, however, it is clear that the evidence was amply sufficient to support the order of deportation. In *habeas corpus* proceedings an order of deportation

is to be upheld if there is any evidence to support it, and if there is no error so shocking as to convince a court that the hearings or trial have been essentially unfair. See *Vajtauer* v. *Commissioner of Immigration*, 273 U. S. 103, 106; *Tisi* v. *Tod*, 264 U. S. 131. In *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468, the Court said:

> * * * hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings it must be shown that the proceedings were manifestly unfair, that the action of the executive officers was such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute * * *.

See also *Zakonaite* v. *Wolf*, 226 U. S. 272, 275.

Judged by these general tests, the hearings before the immigration officials were free from any defect. The alien was afforded an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was accepted. (R. 11.) He was informed of his right to be represented by counsel (R. 12), and he employed an attorney, who was present at the hearings before the Inspector of Immigration. The privilege of cross-examination was freely extended.

The charge upon which the order of deportation issued was that the alien had been found managing a house of prostitution. In support of the administra-

tive finding there was evidence that the alien had transported in his automobile to the house of prostitution a girl whom he had heard was not of good moral character, and that he knew she was going there for the purpose of prostitution. (R. 15–16, 20–21.) The record also shows that he had agreed with Ritchie, who occupied the house, that he would bring to it twice weekly such supplies as were needed by the occupants. (R. 19, 23.) The alien testified that he rented the house in question for $30 a month and sublet it to Ritchie for $15 a week. (R. 19, 22.) Prior to this time he testified that he had been employed as a laborer in a cotton mill. (R. 21.)

From all the circumstances, it seems plain that the officials were justified in believing that the alien was actively concerned in the management of this house of ill fame. Thus the officials were warranted in concluding that the alleged arrangement with Ritchie was merely a subterfuge resorted to by the alien to conceal his actual interest in the business of prostitution (see *Caranica* v. *Nagle*, 23 F. (2d) 545 (C. C. A. 9th), certiorari denied, 277 U. S. 589), and the fact that the defendant transported to the place a woman whom he knew to be a prostitute, of whose purpose in going there he was aware, together with the circumstance that he regularly carried to the establishment such supplies as were needed, might well indicate that he was intimately connected with its management. See *Ex parte Psimoulos*, 222 Fed. 118 (S. D. Cal.), appeal dismissed, 224 Fed. 1022 (C. C. A. 9th).

The fact that petitioner was tried in Rhode Island and convicted in the State Court for the offense of "harboring for prostitution" and not for "managing a house of prostitution," is, of course, immaterial.[2] It is established that a previous conviction in a criminal proceeding is not a requisite to a valid warrant for deportation on a charge that an alien has been found managing a house of prostitution. *Gambroulis* v. *Nash*, 12 F. (2d) 49 (C. C. A. 8th). And, indeed, acquittal by a jury of the charges that are made the basis of the order of deportation does not invalidate the order or show that it was not supported by sufficient evidence. See *Weinbrand* v. *Prentis*, 4 F. (2d) 778 (C. C. A. 6th); *Ex parte Young*, 211 Fed. 370, 373 (W. D. Wash.).

In the light of all the circumstances and the testimony at the hearings, we submit that there was evidence to sustain the administrative determination, and accordingly we urge that the finding made upon the basis of that evidence is beyond attack in such a proceeding as this. *Vajtauer* v. *Commissioner of Im-*

[2] The record does not disclose the particular section of the State statutes which petitioner was convicted of violating. Section 6, Chap. 399, General Laws of Rhode Island, 1923, makes it an offense punishable by imprisonment for not more than five years "for any person to secure a female for a house of ill-fame, or to procure for a female a place as inmate of a house of ill-fame, or by any promise * * * to cause, induce, persuade or encourage a female to * * * become an inmate of a house of ill-fame, or enter a place in which prostitution is encouraged or allowed, or remain therein as such inmate * * *."

migration, supra; Caranica v. *Nagle, supra; Morrell* v. *Baker*, 270 Fed. 577 (C. C. A. 2d), appeal dismissed, 258 U. S. 606.

CONCLUSION

The decision of the court below is correct and should be affirmed.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES.

No. 110.—October Term, 1932.

Alberto Costanzo, Petitioner, *vs.* Anna C. M. Tillinghast, Commissioner of Immigration.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[December 5, 1932.]

Mr. Justice Roberts delivered the opinion of the Court.

Section 19 of the Act of February 5, 1917,[1] directs, *inter alia*, the deportation of any alien who manages a house of prostitution. The petitioner, a citizen of Italy, was arrested, given a hearing, and ordered deported as such a manager. By writ of *habeas corpus* he challenged the legality of the order. The District Court dismissed the writ, and the Circuit Court of Appeals affirmed the decree.

A claim of violation of constitutional rights made in the court below has been abandoned. The Circuit Court of Appeals properly negatived the asserted absence of any evidence to support the action of the Secretary of Labor, and therefore refused, as we do, to review that officer's findings. *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468; *Zakonaite* v. *Wolf*, 226 U. S. 272, 275; *Tisi* v. *Tod*, 264 U. S. 131, 133; *Vajtauer* v. *Commr. of Immigration*, 273 U. S. 103, 106.

Certiorari was granted to resolve a question as to the construction of Section 19 of the act of 1917, which the petitioner says authorized deportation for the cause assigned only within the five years ensuing entry. He entered this country much more than five years prior to the issuance of the warrant for his arrest.

The section, containing nearly nine hundred words, is a single sentence, divided by semi-colons and colons into clauses, qualified by five provisos. The opening clause is: "That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law;" and the predicate or final clause is, "shall, upon the warrant of the Secretary of Labor, be taken into custody and deported." Inserted between these, and separated from the first and from each other by

[1]Ch. 29, 39 Stat. 874, 889.

semi-colons, are eleven subject-clauses each referring to variously described aliens, as "any alien who" etc., and each having as its predicate the clause above quoted, "shall be taken into custody", etc. The evident purpose is to catalogue in one omnibus section the different classes of aliens who may be deported and thus avoid repetition of the predicate verbs.

The dispute is as to whether the qualifying phrase of the first clause, "within five years after entry", is to be carried over from the clause in which it appears and is to be read into each following subject clause, including that applicable to the petitioner, or is to be limited in effect to its own clause. The petitioner urges that the grammatical structure of the sentence and the punctuation require the adoption of the first alternative, while in support of the second the Government appeals to the evident meaning of the entire section, the legislative history, and settled departmental interpretation.

It is to be noted that of the eleven clauses following the first, three contain references to periods of time after entry within which the described aliens may be deported. Thus, with reference to the classes which may be shortly defined as "anarchists" and "convicts", the phrase used is "at any time after entry"; concerning those who have entered without inspection, the limitation is "at any time within three years after entry". Respecting the remaining seven categories contained in as many separate clauses (including that applicable to this case, "any alien who manages . . . any house of prostitution . . . ;") no words of time are employed. Certainly, then, the five year limitation of the first clause does not apply to all the subsequent ones; and since the phrase has a proper office in qualification of the class specified in the clause in which it appears, its effect should be limited to that class and not carried over to the others.

It has often been said that punctuation is not decisive of the construction of a statute. *Hammock* v. *Loan and Trust Co.*, 105 U. S. 77; *Ford* v. *Delta & P. Land Co.*, 164 U. S. 662; *Barrett* v. *Van Pelt*, 268 U. S. 85; *United States* v. *Shreveport Grain & Elevator Company*, 287 U. S. —. Upon like principle we should not apply the rules of syntax to defeat the evident legislative intent.

The meaning of the sentence is made even plainer by the third proviso, which is:

"*Provided, further,* That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of

aliens therein mentioned irrespective of the time of their entry into the United States:"

There is nothing upon which this proviso may operate if such of the preceding clauses as contain no time limitation are qualified by the words of the first fixing the limitation at five years; not so, however, if each clause containing a time limitation is read separately as an exception to the general rule declared by the proviso. We must look to the whole of the section, in order not to give undue effect to particular words or clauses (*Brown* v. *Duchesne,* 19 How. 183, 194; *Pollard* v. *Bailey,* 20 Wall. 520, 525), and when so read the proviso precludes a construction which would carry into all subsequent clauses the five year limitation contained in the first.

If more were needed the legislative history of Section 19 shows that it is a compilation of earlier acts specifying different grounds for deportation; that in the prior legislation affecting aliens managing houses of prostitution, etc., no time limitation was included and that in combining those acts to form the present section Congress did not intend to impose a period of limitation with respect to this cause for deportation.[2] The administrative interpretation, as evidenced by the applicable Rules of the Bureau of Immigration adopted in 1917 and carried forward in later regulations, has been uniform to the effect that no time limitation is applicable in a case like the present.[3] The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight, even if we doubted the correctness of the ruling of the Department of Labor. *Fawcus Machine Co.* v. *United States,* 282 U. S. 375, 378; *McCaughan* v. *Hershey Chocolate Co.,* 283 U. S. 488, 492.

The judgment is

Affirmed.

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[2]Act of March 26, 1910, c. 128, § 2, 36 Stat. 263; Senate Report No. 352, to accompany H. R. 10384 (64th Cong., 1st Sess.).

[3]Rules of Bureau of Immigration, May 1, 1917 (1st Ed., May 1917), rule 22; 2d Ed. November, 1917; 3d Ed. March, 1919; 4th Ed., February, 1920; 5th Ed., December, 1920; 6th Ed., September, 1921; 7th Ed., August, 1922. See, also, Rules of the Bureau of Immigration, February 1, 1924, p. 31, and of July 1, 1925, p. 63.